# Laws, Resolutions and Memorials

OF THE

# STATE OF MONTANA

PASSED BY THE

## Thirty-eighth Legislative Assembly

## In Regular Session

**Held at Helena, the Seat of Government of Said State,**
**Commencing January 7, 1963, and**
**Ending March 7, 1963.**

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**PUBLISHED BY AUTHORITY**

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HeinOnline -- 1963 vol. I i 1963

## Certificate of Authentication

State of Montana )
Department of )ss.
Secretary of State )

I, Frank Murray, Secretary of State of the State of Montana, do hereby certify that by virtue of the authority vested in me by law I have prepared for publication and caused to be printed a copy of all laws, memorials, resolutions and appropriation measures passed by the Thirty-eighth Legislative Assembly of the State of Montana, at the Thirty-eighth Session commencing January 7, 1963, and concluding March 7, 1963; that I have caused to be compared the said printed laws, memorials, resolutions and appropriation measures with the original manuscript thereof now on file in my office, and that the following are true, full and correct copies thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Seat of Government, this 15th day of June, 1963.

Frank Murray

Secretary of State.

# OFFICERS AND MEMBERS

OF THE

# Thirty-eighth Legislative Assembly of the State of Montana

# 1963

TIM M. BABCOCK, GOVERNOR.**

Frank W. Hazelbaker, Speaker of the House.
David F. James, President Pro Tem of the Senate.
Dave M. Manning, President Pro Tem (Ad Interim).

## Members of the Senate

| NAME | RESIDENCE | COUNTY | POLITICS |
|---|---|---|---|
| Anderson, Helen F. | Wibaux | Wibaux | Republican |
| *Balgord, O. P. | Lavina | Golden Valley | Republican |
| Beley, Ward H. | Harlowton | Wheatland | Democrat |
| Bentz, C. C. | Ekalaka | Carter | Republican |
| Bovey, Charles A. | Box 1653, Great Falls | Cascade | Democrat |
| Breen, Jerry W. | Choteau | Teton | Republican |
| *Brenner, J. S. | Grant | Beaverhead | Republican |
| *Carney, Ed. | Scobey | Daniels | Democrat |
| *Cashmore,Dr. Wm. F. | 10 Montana Avenue, Helena | Lewis & Clark | Republican |
| Cole, Kenneth | Winnett | Petroleum | Republican |
| *Cook, Milo H. | Broadus | Powder River | Democrat |
| Cotton, Robert S. | Box 27, Glasgow | Valley | Democrat |
| Cumming, Hugh C. | Drummond | Granite | Democrat |
| *DeWolfe, Percy | Babb | Glacier | Democrat |
| *Durkee, Robert A. | 1 Fifth Street, Havre | Hill | Democrat |
| Dussault, Edward T. | Mullan Road, Missoula | Missoula | Democrat |
| *Edwards, Lochiel | Malta | Phillips | Republican |
| Gerard, Sumner | Ennis | Madison | Republican |
| Goodwin, Lester C. | Townsend | Broadwater | Democrat |
| *Graham, Carroll A. | Lodge Grass | Big Horn | Democrat |
| *Grieve, W. H. | Terry | Custer | Republican |
| Groff, W. A. "Bill" | Victor | Ravalli | Democrat |
| Hafferman, William F. | 314 E. Ninth Street, Libby | Lincoln | Democrat |
| *Hauk, Mike | Terry | Prairie | Democrat |
| Hilling, Henry B. | 1214 Ninth West, Billings | Yellowstone | Republican |
| Huntley, Gene | Baker | Fallon | Democrat |
| *James, David F. | Joplin | Liberty | Democrat |
| Jensen, Arthur N. | Superior | Mineral | Democrat |
| Keller, Webster | Fishtail | Stillwater | Democrat |
| *Lehrkind, Carl, Jr. | 610 South Willson, Bozeman | Gallatin | Republican |
| *MacDonald, John J. | Jordan | Garfield | Democrat |
| *Mackay, William R. | Roscoe | Carbon | Republican |
| Mahoney, Eugene H. | 104 Spruce, Thompson Falls | Sanders | Democrat |
| *Manning, Dave M. | Hysham | Treasure | Democrat |
| *McDonnell, A. Ronald | Big Timber | Sweet Grass | Republican |
| §*McElwain, Joseph A. | 705 Penn. Ave., Deer Lodge | Powell | Republican |
| McGowan, Gordon | Highwood | Chouteau | Democrat |
| McKenna, George S. | Stanford | Judith Basin | Democrat |
| *McKeon, John L. | 316 East 7th St., Anaconda | Deer Lodge | Democrat |
| Melcher, John | Forsyth | Rosebud | Democrat |
| Michels, Lloyd J. | Medicine Lake | Sheridan | Democrat |
| Moberly, Waldo Y. | Sweetgrass | Toole | Republican |
| Moritz, Earl | 1024 West Evelyn, Lewistown | Fergus | Republican |
| *Nees, Stanley R. | Poplar | Roosevelt | Democrat |
| *Nixon, Richard | Hogeland | Blaine | Democrat |
| *O'Neill, R. T. | Roundup | Musselshell | Democrat |
| Reardon, Frank D. | 801 Maryland Ave., Butte | Silver Bow | Democrat |
| Rieder, Arnold | Boulder | Jefferson | Democrat |
| *Rostad, Carl | Loweth Rte., Martinsdale | Meagher | Republican |
| *Schoonover, Leland H. | Polson | Lake | Democrat |
| *Shaw, James N. | Hodges | Dawson | Republican |
| Siderius, George | Somers Stage, Kalispell | Flathead | Democrat |
| *Stein, Ben H. | Shields Route, Livingston | Park | Democrat |
| Thiessen, C. R. | Lambert | Richland | Democrat |
| *Thomas, Robert B. | Wolf Point | McCone | Republican |
| *Ullom, Maurice J. | Conrad | Pondera | Republican |

* Holdover Senator.
§ Appointed to succeed Dave E. Newman, deceased.
** Acting Governor since Donald G. Nutter's death on January 25, 1962.

HeinOnline -- 1963 vol. I v 1963

# House of Representatives

| NAME | RESIDENCE | COUNTY | POLITICS |
|---|---|---|---|
| Aasheim, Magnus | Antelope | Sheridan | Democrat |
| Adams, Ed, Jr. | Shawmut | Golden Valley | Republican |
| Asbjornson, J. O. | Winifred | Fergus | Republican |
| Bailey, Manson H., Jr. | Glasgow | Valley | Democrat |
| Baldwin, Florian | Roundup | Musselshell | Republican |
| Bardanouve, Francis | Harlem | Blaine | Democrat |
| Bashor, Leonard G. | Kevin | Toole | Democrat |
| Beam, W. R. "Bill" | 2540 Woody Drive, Billings | Yellowstone | Republican |
| Beck, Ralph J. | 818 Milwaukee Ave., Deer Lodge | Powell | Republican |
| Blewett, Alex, Jr. | 1927 Cherry Drive, Great Falls | Cascade | Republican |
| Boughton, Bert D. | Jordan | Garfield | Republican |
| Bradford, Truman G. | 1st Natl. Bank Bldg., Great Falls | Cascade | Democrat |
| Brenner, Paul E. | Cardwell | Jefferson | Democrat |
| Broeder, Fred O., Jr. | Rte. 4, Kalispell | Flathead | Republican |
| Casey, Loran | Wolf Point | Roosevelt | Republican |
| Crum, Forrest H. | 626 Avenue D, Billings | Yellowstone | Republican |
| Cummings, Everett D. | Hobson | Judith Basin | Democrat |
| Davis, Warren | 418 Chestnut Street, Anaconda | Deer Lodge | Democrat |
| Deschamps, G. W. | Mullan Road West, Missoula | Missoula | Republican |
| Dykstra, Dan | 1130 Hauser Blvd., Helena | Lewis & Clark | Republican |
| East, Vic | Forsyth | Rosebud | Republican |
| Egan, Eugene C. | Valier | Pondera | Democrat |
| Eskildsen, Leslie | Malta | Phillips | Democrat |
| Etchart, Mark S. | Glasgow | Valley | Republican |
| Falkenstern, Arnold H. | Terry | Prairie | Republican |
| Flynn, Elmer | Mullan Road, Missoula | Missoula | Democrat |
| Garrison, W. F. "Bill" | Glen | Madison | Republican |
| Gill, Henry L. | Thompson Falls | Sanders | Democrat |
| Goan, William S. | 46 Lewis Avenue, Billings | Yellowstone | Republican |
| Good, John H. | 404 South Excelsior Street, Butte | Silver Bow | Democrat |
| Haines, Tom | 15 Martha's Court, Missoula | Missoula | Republican |
| Hanks, Virgil | Star Route, Gallatin Gateway | Gallatin | Democrat |
| Harper, Warren W., Sr. | 717 N. Second St., Livingston | Park | Democrat |
| Haughey, James M. | Box 2529, Billings | Yellowstone | Republican |
| Hawks, Clyde L. | St. Xavier | Big Horn | Republican |
| Hazelbaker, Frank W. | 420 S. California St., Dillon | Beaverhead | Republican |
| Healy, John E. "Jack" | 624 W. Granite St., Butte | Silver Bow | Democrat |
| Hemstad, Nels | Dutton | Teton | Republican |
| Hibbard, Henry S. | 618 Madison Ave., Helena | Lewis & Clark | Republican |
| Holtz, Malcolm E. | 2625 4th Ave. N., Great Falls | Cascade | Republican |
| Jenkins, L. V., Jr. | Hysham | Treasure | Republican |
| Jensen, Millo | Ronan | Lake | Republican |
| Johnson, Edward A. | 710 West 6th Street, Anaconda | Deer Lodge | Democrat |
| Judge, Thomas L. | 417 Dearborn Avenue, Helena | Lewis & Clark | Democrat |
| Keller, Dr. M. F. | 3101 4th Ave. N., Great Falls | Cascade | Republican |
| Kvaalen, Oscar S. | Lambert | Richland | Republican |
| Laas, Walter | Chester | Liberty | Democrat |
| Leuthold, John H. | Molt | Stillwater | Republican |
| Lewis, Joe H. | Browning | Glacier | Democrat |
| Lombardi, Jerry | 947 Waukesha St., Butte | Silver Bow | Democrat |
| Lucas, James P. | 500 South Strevell, Miles City | Custer | Republican |
| Lund, Arthur E. | Scobey | Daniels | Republican |
| Lundgren, Conrad F. | West Glacier | Flathead | Republican |
| Mathers, W. L. | 314 South Merriam, Miles City | Custer | Republican |
| McNamer, W. R. | 235 Yellowstone Ave., Billings | Yellowstone | Republican |
| Murray, Marshall H. | 1004 Second Ave. E., Kalispell | Flathead | Republican |
| Nash, Joy I. | Townsend | Broadwater | Republican |
| Nelson, Carl | Hall | Granite | Republican |
| Nichols, Norris | Stevensville | Ravalli | Republican |
| Northey, Harry T. | 514 Daly Avenue, Missoula | Missoula | Republican |
| Nutting, Richard A. | Silesia | Carbon | Republican |
| O'Hair, Allyn W. | Box 955, Livingston | Park | Democrat |
| Osburnsen, Arthur | Winifred | Fergus | Democrat |
| Pierce, John H. | 1312 Parkhill Drive, Billings | Yellowstone | Republican |
| Raundal, Robert S. "Bob" | Winnett | Petroleum | Democrat |
| Rearden, John D. "Johnnie" | 621 3rd Ave. N., Great Falls | Cascade | Democrat |
| Regan, Leonard D. | 2805 3rd Ave. N., Great Falls | Cascade | Democrat |
| Rehberg, Jack D. | 2317 Rehberg Lane, Billings | Yellowstone | Republican |
| Reinecke, Fred W. | Wibaux | Wibaux | Republican |
| Rosell, Antoinette Fraser | 106½ Clark Avenue, Billings | Yellowstone | Republican |
| Schepens, Fred W. | 221 North Merrill, Glendive | Dawson | Democrat |
| Schye, Elmer | Box 504, White Sulphur Springs | Meagher | Republican |
| Selstad, Tom | Horizon Addition, Great Falls | Cascade | Republican |
| Seymour, L. G. "Chink" | 1926 Central Ave., Great Falls | Cascade | Republican |
| Shelden, Arthur H. | Route 1, Box 317, Libby | Lincoln | Democrat |
| Slaby, Cyril E. | 612 15th Street, Havre | Hill | Democrat |
| Smiley, Richard D. | Route 2, Box 149, Bozeman | Gallatin | Republican |
| Smith, Carl M. | Olive | Powder River | Republican |
| Spahr, William E. | 1204 4th Ave. N., Great Falls | Cascade | Democrat |
| Spilde, Gene | Big Timber | Sweet Grass | Republican |

HeinOnline -- 1963 vol. I vi 1963

**HOUSE OF REPRESENTATIVES—(Continued)**

| NAME | RESIDENCE | COUNTY | POLITICS |
|---|---|---|---|
| Stranahan, C. G. | Box 25, Fort Benton | Chouteau | Democrat |
| Swanz, E. A. | Harlowton | Wheatland | Republican |
| Thompson, John N. | 1213 South Fifth, Bozeman | Gallatin | Republican |
| Tooke, Richard D. | Ekalaka | Carter | Republican |
| Tracy, Thomas P. | 2425 Nettie Street, Butte | Silver Bow | Democrat |
| Turnage, Jean A. | Polson | Lake | Republican |
| Twedt, Gordon R. | Rudyard | Hill | Democrat |
| Watt, Robert D. | 440 S. Avenue E., Missoula | Missoula | Democrat |
| Wayrynen, Ray J. | 133 East Broadway St., Butte | Silver Bow | Democrat |
| Weeks, Dr. S. A. | Baker | Fallon | Republican |
| Welch, Kermit G. | St. Regis | Mineral | Democrat |
| Woodard, Hubert E. | 127 Avenue C, Billings | Yellowstone | Republican |
| Wright, J. Stewart | Weldon Route, Wolf Point | McCone | Republican |
| Zimmer, William | Olney | Flathead | Democrat |

HeinOnline -- 1963 vol. I vii 1963

# CONTENTS


| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 1 | | 2 | An act to fix the compensation of officers and employees of the Thirty-eighth Legislative Assembly of the state of Montana. | 1 |
| 2 | | 23 | An act to amend Section 61-211, R. C. M. 1947, relating to adoption proceedings. | 3 |
| 3 | | 24 | An act to amend the appendix of form contained in chapter 13, Laws of 1961, being the M. R. Civ. P. by adding a new form to be numbered Form 23 prescribing the form of a supersedeas bond. | 4 |
| 4 | | 28 | An act to amend Section 93-8505, R. C. M., 1947, relating to appearances in actions by defendants. | 6 |
| 5 | | 29 | An act to repeal Section 93-3004, R. C. M. 1947, relating to the manner and time of issuing an alias summons. | 6 |
| 6 | | 30 | An act to repeal Section 93-3001, R. C. M. 1947, relating to commencement of civil actions. | 6 |
| 7 | | 33 | An act to repeal Section 93-2719, R. C. M. 1947, relating to how objection that action not commenced in time may be taken. | 7 |
| 8 | | 34 | An act to amend Section 91-901, R. C. M. 1947, relating to the filing of contests on probate of wills. | 7 |
| 9 | | 9 | An act to amend Section 11-1914, Revised Codes of Montana, 1947, relating to the duties of the board of trustees of the fire department relief association; providing such board with the power and authority to invest in time or savings deposits in addition to bonds and securities. | 8 |
| 10 | | 12 | An act to amend Section 11-1310, Revised Codes of Montana, 1947, relating to the investment of city or town moneys from funds for which there is no immediate demand; providing that moneys realized from the sale of bonds, for which there is no immediate demand, may be invested by a city or town in approved securties; repealing all acts or parts of acts in conflict herewith. | 9 |
| 11 | | 14 | An act to amend Section 16-2001, Revised Codes of Montana, 1947, relating to the investment of sinking funds of counties, cities and towns; providing counties, cities and towns with the power and authority to invest in time or savings deposits in addition to bonds and securties. | 10 |
| 12 | | 15 | An act to amend Section 16-2044, Revised Codes of Montana, 1947, relating to the investment of county bond sinking and interest funds; providing that such funds may be invested in time or savings deposits. | 11 |
| 13 | | 13 | An act to amend Section 16-2050, Revised Codes of Montana, 1947, relating to school district or county high school funds realized from bond sales for purposes of construction; requiring the officer in charge of such funds to invest idle funds, when requested by the school district or county high school governing body, in time or savings deposits or in short-term obligations of the United States of America, and to credit interest earned to the sinking fund of such school district or county high school, notwithstanding other provisions. | 13 |
| 14 | | 32 | An act to correct a mistaken and inadvertent purported repeal of R. C. M. 1947, Section 93-2824, known as the 'general survival statute' which was shown as superseded by Rule 25, M. R. Civ. P., adopted as chapter 13, Laws of 1961, effective January 1, 1962; re-enacting said Section 93-2824, R. C. M. 1947; and making the same retroactive to accomplish the purpose of correcting the mistake contained in chapter 13, Laws of 1961, Section 79, Rule 86, and Section 82, Table B, Section 83, Table C, and Section 84, and amending Tables B and C of M. R. Civ. P. by deleting therefrom reference to Section 93-2824, R. C. M. 1947. | 14 |
| 15 | | 40 | An act to amend Section 93-3702, R. C. M. 1947, relating to the verification of pleadings. | 16 |


HeinOnline -- 1963 vol. I ix 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 16 | | 41 | An act authorizing and empowering the supreme court of the state of Montana to regulate by rules, the pleading, practice and procedure in civil cases in the courts of the state of Montana, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits. | 17 |
| 17 | | 44 | An act amending Section 84-1818, R. C. M. 1947, to provide that applications for refund of gasoline license tax shall be filed within twelve (12) months after the date of purchase. | 19 |
| 18 | | 46 | An act to approve and legalize and adopt as prima facie the Laws of Montana replacement volume number 3 (in two parts) and replacement volume number 4 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes. | 23 |
| 19 | | 79 | An act to amend Section 91-1101 and Section 91-1107 Revised Codes of Montana 1947, so as to change the time for contesting a will after probate thereof from one year to six months. | 24 |
| 20 | | 82 | An act to amend Section 3-2476 of the Revised Codes of Montana, 1947, relating to the definition of ice cream; to provide that the minimum weight of ice cream be not less than four and one-half (4½) net pounds per gallon. | 25 |
| 21 | 1 | | An act amending Sections 75-4146 and 75-4230, R. C. M. 1947, relating to the attendance of a high school pupil outside the county of his residence. | 27 |
| 22 | 25 | | An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the vote of the people of the state of Montana and repealing all acts and parts of acts in conflict therewith. | 31 |
| 23 | 26 | | An act to amend Section 93-902, R. C. M. 1947, to prohibit any justice or judge of a court of record from acting as an administrator or executor in any estate, for compensation. | 32 |
| 24 | | 38 | An act to amend Section 10-602 R. C. M. 1947, to provide that the crimes of rape, arson, and assault in the second degree, be included in those crimes for which a child over sixteen (16) years of age may be prosecuted as an adult. | 32 |
| 25 | | 47 | An act to amend Section 16-1803, Revised Codes of Montana, 1947, relating to requests for bids in making purchases by county commissioners; providing that the requirements of said section shall apply also to contracts for the construction of buildings. | 34 |
| 26 | | 50 | An act to amend Section 11-1202, Revised Codes of Montana, 1947, relating to awarding of contracts by a city or town for work, supplies or materials for which a sum must be paid exceeding one thousand dollars ($1,000.00); providing that the requirements of said section shall apply also to contracts for the construction of buildings. | 35 |
| 27 | | 62 | An act providing for a corporate surety bond for operation of a public warehouse; amending Section 3-228, R.C.M. 1947, to require bond be furnished by a corporate surety. | 37 |
| 28 | | 72 | An act to amend Section 26-202.3, R. C. M. 1947, to clarify the definition of a resident for hunting and fishing license purposes, and deleting an obsolete provision on citizenship papers. | 39 |
| 29 | | 74 | An act to amend Section 3-1103, Revised Codes of Montana, 1947, relating to the prevention of the spread of contagious disease among fruit and fruit trees, to allow the re-use of any crate, box, barrel, package or wrapping once having contained fruit. | 40 |
| 30 | | 75 | An act to amend Section 3-1404, Revised Codes of Montana, 1947, relating to the grading, branding and labeling of farm products; to provide for the repeal of subsection F and making the U. S. commercial grade a standard grade in the State of Montana. | 41 |


HeinOnline -- 1963 vol. I x 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 31 | | 114 | An act to amend Section 46-1411, Revised Codes of Montana, 1947, relating to the duty of owners or possessors of unfenced lands or patented mining claims within or adjacent to national forest reserves to mark the boundaries thereof, to provide that the same duty shall be imposed upon the owner or possessor of an unpatented mining claim; and to amend Section 46-1413, Revised Codes of Montana, 1947, relating to limitations on the right to bring action against the owner of trespassing livestock where boundaries have not been marked, to provide that such limitations shall be applicable to unpatented mining claims and to all livestock; repealing all acts and parts of acts in conflict herewith; and providing an effective date. | 42 |
| 32 | 21 | | An act amending Section 43-310, R. C. M., 1947, to provide for an increase in the mileage payments to members of the legislative assembly. | 44 |
| 33 | 37 | | An act to amend Section 16-1015, R. C. M. 1947, relating to the powers and duties of county commissioners to levy an annual tax on the taxable property of the county to defray current expenses, including salaries not otherwise provided for, not exceeding sixteen (16) mills for any one (1) year and to levy such taxes as are required by special or local statutes; and providing for an additional levy of four (4) mills for a prescribed period. | 44 |
| 34 | 49 | | An act to establish legal capacity and obligation of minors in contracting to borrow money to finance education beyond high school. | 45 |
| 35 | 50 | | An act to amend Section 79-301, R. C. M. 1947, relating to deposit of funds in the hands of the state treasurer and providing for the substitution of the securities pledged for the security of such deposits. | 45 |
| 36 | | 36 | An act to amend Section 26-202.1, R. C. M. 1947, to provide that any child residing at the Montana children's center at Twin Bridges shall be entitled to fish without a license. | 48 |
| 37 | | 90 | An act to amend Section 46-1005 of the Revised Codes of Montana, 1947, by enlarging the definition of an estray to include sheep and lamb. | 52 |
| 38 | | 91 | An act to amend Section 26-701, and to repeal Sections 26-702, 26-703, and 26-707, Revised Codes of Montana, 1947, relating to shipment of animals from the state. | 53 |
| 39 | 47 | | An act to amend Section 5-1028, R. C. M. 1947, prohibiting branch banking and providing for drive-in and walk-up facilities. | 53 |
| 40 | 48 | | An act to amend Section 16-2618, R. C. M. 1947, relating to deposit of public funds by county, city and town treasurers, and providing for the substitution of securities pledged for the security of such deposits. | 54 |
| 41 | | 51 | An act regulating the operation of mortuaries and the practice of mortuary science and funeral directing; establishing a state board of morticians; amending Sections 69-119, 69-2306, 69-2309, 69-2310, and 9-604, R. C. M. 1947; and repealing Sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710, and 82-711, R. C. M. 1947. | 57 |
| 42 | | 78 | An act providing for a recount of votes in elections; declaring the method of determining when a recount may be requested; specifying the duties of the secretary of state and the county clerks; establishing county recount boards; providing the method of recount; providing for the expense of a recount; and amending Sections 23-1611, 23-1712, and 23-1807, R. C. M. 1947. | 65 |
| 43 | | 86 | An act amending Section 3-1714, R. C. M. 1947, (a) definition of 'fertilizer material'; (f) provision after due public notice to change guarantees from phosphoric acid to phosphorus, and from potash to potassium, and guarantees of other nutrients; (g) provisions for grade to agree with guaranteed analysis; (p) define specialty fertilizer; (g) define soil amendment. Amending Section 3-1715, R. C. M. 1947, requiring registration of soil amendments, changing phosphoric acid to phosphorus and potash to potassium, information required to register soil amendments, requiring | |


HeinOnline -- 1963 vol. I xi 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | licensing of blendors and mixers of fertilizer materials. Amending Section 3-1716, R. C. M. 1947, providing for labeling of soil amendments. Repealing Section 3-1719, R. C. M. 1947. Minimum plant food. Amending Section 3-1723, R. C. M. 1947, rules and regulations. Provide procedures to adopt rules and regulations and provide for hearing. Amend Section 3-1724, R. C. M. 1947. Cancellation of registration. To designate hearing procedure. Effective date of amendments, July 1, 1963, except date provided for change in guaranteed analysis. | 72 |
| 44 | | 108 | An act to amend Section 71-217, Revised Codes of Montana, 1947, relating to authority of the state department of public welfare to reduce the reimbursements of the county share of personnel costs in certain circumstances; and repealing all acts and parts of acts in conflict herewith. | 79 |
| 45 | | 212 | An act to amend Section 5-206, R. C. M. 1947, relating to the capital and surplus of state banks and the par value of the common capital stock of state banks. | 80 |
| 46 | | 342 | An act amending Section 23-605, R. C. M. 1947, by increasing the maximum hourly rate for election officers from one dollar ($1.00) to one dollar twenty-five cents ($1.25) per hour. | 82 |
| 47 | 52 | | An act continuing and perpetuating the Montana Historical Society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts commission; and repealing Sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120, and 19-121, R. C. M. 1947. | 82 |
| 48 | | 126 | An act providing that boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas may be annexed from territory contiguous to an existing television district; and providing the procedure for such annexation. | 87 |
| 49 | | 162 | An act to amend Section 11-2008, Revised Codes of Montana, 1947, relating to fire districts, to change the requirements for the petitions necessary to create, dissolve, and change boundaries of fire districts. | 87 |
| 50 | | 185 | An act to amend Chapter 24, Title 11, Revised Codes of Montana, 1947, by the addition of Section 11-2414, providing regulations governing the terms and conditions of the refunding of municipal water and sewer revenue bonds. | 91 |
| 51 | | 186 | An act to amend Section 11-2218, Revised Codes of Montana, 1947, relating to the issuance and sale of negotiable revenue bonds for the construction, reconstruction and improvement of municipal water and sewer systems and additions thereto, and the refunding of such bonds, to provide regulations governing the terms and conditions of such refunding. | 93 |
| 52 | | 240 | An act to amend Section 11-2404, R. C. M. 1947, to alter and reduce the method and amount of advertising required in the sale of bond issues amounting to less than one hundred fifty thousand dollars ($150,000). | 97 |
| 53 | | 291 | An act to amend Section 26-301, R. C. M. 1947, by removing the prohibition against using salmon eggs, salmon spawn or imitations as bait for fishing. | 98 |
| 54 | | 318 | An act to amend Section 11-1919, R. C. M. 1947, relating to the manner in which the state auditor of the state of Montana shall pay to the fire department relief associations, legally organized and existing in the several cities and towns in the state of Montana, their respective share of the premium taxes collected from insurers authorized to do business in the state of Montana. | 101 |
| 55 | | 64 | An act to amend Section 1, Chapter 267 of the Laws of the Thirty-fourth Legislative Assembly, 1955, as amended by Section 1, Chapter 16 of the Laws of the Thirty-fifth Legislative Assembly, 1957, and by Section 2, Chapter 36 of the Laws of the Thirty-sixth Legislative Assembly, 1959, compiled as Section 26-202.1, R. C. M. 1947, relating to fish and game licenses, fees, classification of licenses, fees | |


HeinOnline -- 1963 vol. I xii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | and powers under licenses, to provide that holders of Class A-1 resident big game licenses who apply for special licenses for moose, mountain goat, mountain sheep, bison or buffalo shall be given preference over applicants who hold a class B-2 nonresident big game license. | 102 |
| 56 | | 118 | An act to amend Sections 11-1925, 11-1926 and 11-1927, R. C. M. 1947, relating to service pensions, disability pensions and pensions to widows and orphans of firemen, and the increase thereof. | 106 |
| 57 | | 190 | An act to amend Section 23-1611, R. C. M. 1947, relating to voting machines; providing that the period of time during which a voting machine must remain sealed and locked after an election shall be reduced from thirty (30) days to five (5) days when a machine is used in any municipal primary nominating election; providing for an effective date. | 110 |
| 58 | | 232 | An act exempting benefits received under the federal employees retirement act up to thirty-six hundred dollars ($3,600) from Montana state income tax. | 112 |
| 59 | | 235 | An act requiring a corporation to obtain a tax clearance certificate from the state board of equalization before dissolution is allowed and providing that this act shall be codified as Section 15-1119, R. C. M. 1947. | 112 |
| 60 | | 236 | An act to amend Section 84-1511, R. C. M. 1947, providing that a dissolving corporation pay the corporation license tax determined on the basis of its net income for the final period in which it did business and deleting the amount of three per cent (3%) providing that corporations taxes cannot be shifted from the corporation to the stockholders unless the stockholders agree to assume personal liability for such taxes. | 113 |
| 61 | | 327 | An act to amend Section 75-2212, R. C. M. 1947, by changing the date of Arbor Day, and providing an effective date. | 114 |
| 62 | | 337 | An act authorizing the creation of a rural improvement district including areas in more than one (1) county; providing the procedure of administration therefor; providing an effective date. | 115 |
| 63 | | 390 | An act validating certain instruments affecting real property and which were erroneously executed or acknowledged, notice imparted by recording thereof, and providing that duly certified copies thereof may be read in evidence, with like effect as copies of an instrument duly executed, acknowledged and recorded. | 116 |
| 64 | | Sub. 17 | An act to amend Sections 84-1802, 84-1818, and 84-1819, R. C. M. 1947, relating to the gasoline dealers' license tax; providing that all gasoline sold or delivered by any dealer to any county, incorporated city or town or school district of this state shall be exempt from said tax; providing a procedure for issuance and use of governmental gasoline tax exemption certificates and permits. | 117 |
| 65 | | 65 | An act to amend Section 2, Chapter 267, Laws of the Thirty-fourth Legislative Assembly, 1955, compiled as Section 26-202.2, R. C. M. 1947, relating to special fish and game licenses and the tagging of the carcasses of game animals, by providing a lesser period within which persons who have obtained a special license may again make application for such a license, and repealing all acts and parts of acts in conflict herewith | 125 |
| 66 | | 171 | An act to amend Sections 84-1831 and 84-1832, R. C. M. 1947, relating to the tax on special fuels; providing that the various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of said tax; providing for an effective date. | 127 |
| 67 | | 211 | An act to amend Section 79-1202, Revised Codes of Montana, 1947, as amended by Chapter 173, Laws of Montana, 1959, relating to investment of funds of the state of Montana, and altering the types of securities in which the long term investment fund may be invested; repealing all acts and parts of acts in conflict herewith; and providing an effective date. | 129 |


HeinOnline -- 1963 vol. I xiii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 68 | | 213 | An act amending Section 16-4527 of the Revised Codes of Montana, 1947, pertaining to county water districts; providing that notice of intention to levy and collect taxes may be given by regular first class mail or registered mail and providing that in the said notice of intention the boundaries or description of the lands to be assessed may be recited in full or may be given by reference to instruments filed or recorded in the office of the clerk and recorder, treasurer or assessor of the county or counties in which the district or part thereof is situate; repealing all acts or parts of acts in conflict herewith; and providing a saving clause and an effective date. | 134 |
| 69 | | 225 | An act pertaining to adjustment of hail insurance losses with the state board of hail insurance; and amending Section 82-1516, R. C. M. 1947, to allow applicant ten (10) days after receiving adjustment offer in writing to appeal; and giving applicant option to submit disagreement to arbitration or to bring suit against the state board of hail insurance. | 137 |
| 70 | | 233 | An act providing that under Chapter 18 of Title 84, R. C. M. 1947, the date of mailing is deemed the date of filing of reports, notices, payments or claims for refunds; providing that the state board of equalization establish rules and regulations and authorizing the state board of equalization to examine records of gasoline dealers; amending Section 84-1801, R. C. M. 1947, to simplify the definitions of gasoline and aviation gasoline; amending Section 84-1802, R. C. M. 1947, deleting requirement for sworn statements; amending Section 84-1807, R. C. M. 1947, to provide that the lien has effect of a judgment lien; amending Section 84-1809, R. C. M. 1947, to require invoices of dealers contain information required by the board; amending Section 84-1831, R. C. M. 1947, changing the definition of special fuels; amending Section 84-1833, R. C. M. 1947, providing for a one thousand dollar ($1,000.00) bond for a special fuel dealer and providing for a lien for unpaid taxes; amending Section 84-1835, R. C. M. 1947, by changing filing date. | 139 |
| 71 | | 251 | An act to amend Section 15-2011, R. C. M. 1947, relating to the securities act of Montana and the general provisions regarding registration of securities thereunder. | 153 |
| 72 | | 270 | An act amending Section 40-2822, R. C. M. 1947, pertaining to countersignature requirement on insurance policies issued in Montana; eliminating necessity for countersignature on bid bonds required under Section 6-501, R. C. M. 1947. | 155 |
| 73 | | 316 | An act amending Section 84-1813, R. C. M. 1947, relating to the tax on diesel fuel and other specified motor fuels; specifying and expanding the uses, situations and conditions to which the tax shall apply when used in motor vehicles, motorized equipment and engines, and providing for the method of collection. | 156 |
| 74 | | 58 | An act amending Section 77-117, R. C. M. 1947, to provide for an assistant adjutant general for army and an assistant adjutant general for air. | 157 |
| 75 | | 141 | An act amending Section 84-4198, R. C. M. 1947, to provide that lessee of tax deed land held by a county shall be given preference on the sale of such land if he bids an amount equal to the high bid for such land. | 159 |
| 76 | | 226 | An act to amend Section 75-1632, R. C. M. 1947, by deleting from subsection 11 the authority and duty of the trustees to provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed. | 159 |
| 77 | | 246 | An act to amend Section 75-4303, R. C. M. 1947, by striking a portion thereof, and to amend Section 75-4304, R. C. M. 1947, by changing the amount of tuition; providing an effective date and repealing clause. | 163 |
| 78 | | 247 | An act to amend Section 40-2821, R. C. M. 1947, by extending the period when the tax on net insurance premiums shall be two and one-quarter per cent (2¼%) of such premiums from the calendar years 1961 and 1962 to the calendar years 1963 and 1964. | 165 |


HeinOnline -- 1963 vol. I xiv 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 79 | | 259 | An act to provide for the support of the government of Montana for the years 1963 and 1964, providing a severability clause and an effective date. | 168 |
| 80 | | 261 | An act to amend Section 84-6208, R. C. M. 1947, relating to the computation of taxes by the county assessor on net proceeds and royalties; providing for withholding by the producer; providing for an effective date and repealing all acts and parts of acts in conflict. | 169 |
| 81 | | 55 | An act to provide for the assumption of criminal and/or civil jurisdiction over the confederated Salish and Kootenai Indians and their reservation and land as authorized by federal law; providing the time and the method thereof, and the duty of the governor with respect thereto. | 170 |
| 82 | | Sub. 9 | An act amending Section 93-901, R. C. M. 1947, relating to the disqualification of judicial officers. | 172 |
| 83 | 54 | | An act amending Section 28-105, R. C. M. 1947, to require that before a forest fire protection district may be created a hearing shall be held after notice given to all owners to be affected and to require approval thereof by no less than 75% of the owners representing at least 51% of the acreage included in the proposed district; and providing an effective date. | 174 |
| 84 | 76 | | An act to provide that county clerk and recorders may take out memberships in certain organizations at the expense of the county. | 176 |
| 85 | 77 | | An act to amend Section 25-508, R. C. M. 1947, to provide for expenses for county clerk and recorders when attending a general association meeting. | 176 |
| 86 | 88 | | An act to amend Section 53-106.1, R. C. M. 1947, to provide that only a motor vehicle manufactured more than thirty (30) years prior to the year 1963 shall be licensed as a collectors' item. | 178 |
| 87 | 104 | | An act to authorize boards of county commissioners to lease county facilities for the purpose of operating a boarding home or nursing home for the aged. | 179 |
| 88 | 105 | | An act to authorize boards of county commissioners to establish a county boarding home or nursing home for the indigent or non-indigent aged; providing this act shall be in full force and effect upon passage and approval. | 179 |
| 89 | 112 | | An act to amend Chapter 13, Section 12, Rule 12, Laws of Montana, 1961, Montana rules of civil procedure, relating to motions covering defenses and objections. | 180 |
| 90 | 126 | | An act to amend Section 59-516, R. C. M. 1947, to provide that certain records may be destroyed after a period of twenty-five years. | 183 |
| 91 | 160 | | An act to amend Section 32-1615, R. C. M. 1947, to provide that the highway department shall prepare and file a plat in the same manner as a natural person whenever a parcel of land taken for highway use is such a shape or size to come under the provisions of Section 11-614, R. C. M. 1947. | 183 |
| 92 | 162 | | An act for the submission to the qualified electors of the state of Montana an amendment to Section 29 of Article VIII of the Constitution of the state of Montana relating to the salary of the justices of the supreme court and the judges of the district courts and providing for the quarterly payment thereof by the state of such salary and providing that such salary shall not be diminished during the terms for which such justices and judges shall have been respectively elected. | 187 |
| 93 | | 124 | An act to provide that licensed physicians and surgeons, and other persons, shall not be liable for any civil damages for the rendition of emergency care or assistance done without compensation at the scene of emergencies or accidents, for any acts or omissions by such persons rendering such emergency care. | 187 |
| 94 | | 150 | An act amending Section 91-2202, R. C. M. 1947, to provide for reasonable compensation for estate appraisers, to be allowed by the court or judge. | 188 |


HeinOnline -- 1963 vol. I xv 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 95 | | 152 | An act to amend Section 92-208, R. C. M. 1947, and Section 92-209, R. C. M. 1947, by eliminating the right of election by employees to be bound by the provisions of the workmen's compensation act except in the case of officers of private corporations. | 189 |
| 96 | | 195 | An act relating to the regulation of traffic on highways; amending Section 32-2174, R. C. M. 1947, so that the section will refer to vehicles approaching a 'yield' intersection, instead of a 'yield right of way' intersection; providing an effective date. | 190 |
| 97 | | 8 | An act amending Section 84-5606, R. C. M. 1947, to provide that the cigarette excise tax is a direct tax on the consumer. | 191 |
| 98 | | 19 | An act to amend Section 25-609, Revised Codes of Montana, 1947, relating to salaries of elected county officials; providing that salaries of such officials shall not be changed during the entire term for which such officials are elected regardless of any change in population or taxable valuation of the county during such term; providing that persons filling vacancies that occur in such offices shall receive the same salary as their predecessors for the remainder of the unexpired term; repealing all acts or parts of acts in conflict herewith. | 193 |
| 99 | | 45 | An act to amend Section 71-302, R. C. M. 1947, to provide that time spent in a licensed nursing home or hospital, or a private charitable institution, shall not be counted in determining county residence for the purpose of relief. | 194 |
| 100 | | 88 | An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as 'The 1963 Bond Validating Act'; containing a repealing clause and providing an effective date. | 195 |
| 101 | | 100 | An act to adopt the uniform act for simplification of fiduciary security transfers as promulgated by the national conference of commissioners on uniform state laws in 1958; establishing a mode for transfer of securities held by fiduciaries; providing evidence of appointment or incumbency of a fiduciary; providing for the filing of adverse claims; and removing a duty by corporations and transfer agents to inquire into the rightfulness of security transfers by fiduciaries. | 196 |
| 102 | | 175 | An act to amend Section 1-603, Revised Codes of Montana, 1947, as amended by Chapter 16 of the Session Laws of the Thirty-first Legislative Assembly, 1949, relating to the operation of aircraft in a careless or reckless manner, by providing that the prohibition against operation of an aircraft in such manner as to endanger the life or property of others applies specifically to the pilot of such aircraft. | 201 |
| 103 | | 203 | An act authorizing and empowering the supreme court of the state of Montana to recommend changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits; creating a commission to prepare suggested changes in the criminal law of the state of Montana and prescribing the membership and powers and duties of said commission; providing for employment of a secretary-stenographer of the commission and employment of research agencies, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes in the criminal law of the state of Montana shall be submitted to the Thirty-ninth Legislative Assembly of the state of Montana for its consideration; repealing all acts and parts of acts in conflict herewith and providing for an effective date of this act. | 202 |
| 104 | | 224 | An act to amend Section 75-1620, Revised Codes of Montana, 1947, relating to the expenses of election; and containing a repealing clause; and fixing an effective date. | 205 |


HeinOnline -- 1963 vol. I xvi 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 105 | | 252 | An act to amend Section 15-2015, R. C. M. 1947, relating to the securities act of Montana and the filing of a consent to service of process thereunder. | 205 |
| 106 | | 301 | An act to amend Section 75-3414 of the Revised Codes of Montana, 1947, as amended, relating to transportation budgets; to provide that cash balances of a high school district transportation fund shall be used to reduce the district levy, unless no district levy will be required and that in those cases cash balances shall be used to reduce the county wide levy. | 206 |
| 107 | | 339 | An act to amend Section 75-1630, R. C. M. 1947, relating to elementary school attendance outside the district of residence; providing for authorization of such attendance; providing for payment of tuition; and fixing an effective date. | 210 |
| 108 | | 348 | An act to amend Sections 23-1301 and 23-1312, R. C. M. 1947, relating to voting by elector when absent from place of residence or physically incapacitated from going to polls; voting before election day by prospective absentee or physically incapacitated elector, by providing that same should apply to school elections. | 214 |
| 109 | | 369 | An act to amend Section 4-172, R. C. M. 1947, enacted as Chapter 200, Laws of 1959, relating to bottle clubs and containing definitions; and providing for an effective date and repealing clause. | 215 |
| 110 | | 20 | An act providing that moneys received by the state as indemnification for damage to state buildings may only be used to repair the damaged property, to replace the damaged property, or be transferred to the fund and account from which premiums were paid on the insurance policy, and providing exceptions. | 215 |
| 111 | | Sen. Sub for H.B. 26 | An act to amend Section 41, Chapter 13, Session Laws of Montana, 1961, being Rule 41, M. R. Civ. P. relating to dismissal of action, by adding a new sub-section. | 216 |
| 112 | | 54 | An act providing for the establishment, control, financing, conduct and maintenance of a department of Montana state hospital which will provide services for the custody, care, treatment and rehabilitation of persons suffering from the illness of alcoholism; provide for the admission, detention, costs, maintenance and release of patients; provide for research into the causes of alcoholism; provide for prevention of alcoholism; and repealing Chapter 7 of Title 38 of the Revised Codes of Montana as amended. | 218 |
| 113 | | 60 | An act to amend Section 16-912, Revised Codes of Montana, 1947, relating to compensation of members of the boards of county commissioners; providing that the salaries of the members of such boards shall not be changed during the entire term for which such members are elected, regardless of any change in the classification of the county during such term; providing that persons filling vacancies on the boards of county commissioners shall receive the same salary as their predecessors for the remainder of the unexpired term; and providing for payment of mileage; repealing all acts or parts of acts in conflict herewith; providing an effective date. | 221 |
| 114 | | 61 | An act directing the commissioner of agriculture to transfer the department of agriculture elevator storage trust fund held by the First National Bank and Trust Company, Helena, Montana, and the department of agriculture bean storage fund, held by the Yellowstone Bank, Laurel, Montana, to the general fund. | 223 |
| 115 | | 93 | An act to amend Section 10-622, Revised Codes of Montana, 1947, as amended by Chapter 166, Laws of 1961, relating to the appointment, removal and salaries of probation officers for the juvenile departments of district courts in the state of Montana: providing for salary increases and change in qualifications: and repealing all acts and parts of acts in conflict herewith. | 223 |
| 116 | | 142 | An act to amend Section 59-538, R. C. M. 1947, which relates to the payments for subsistence or per diem paid to persons in the state service for time engaged in travel; to provide that there shall be paid to persons in the state | |


HeinOnline -- 1963 vol. I xvii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | service for the time engaged in travel within the state while on official business ten dollars ($10) per day, and for time engaged in travel outside the state sixteen dollars ($16) per day. | 224 |
| 117 | | 164 | An act to amend Section 25-401, R. C. M. 1947, and Section 25-404, R. C. M. 1947, relating to jurors' fees and witnesses' fees. | 225 |
| 118 | | Sen. Sub. for H.B. 209 | An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emergency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date. | 226 |
| 119 | | 223 | An act to amend Section 91-1702, R. C. M. 1947, to provide that no bond be required in certain cases, and providing an effective date. | 227 |
| 120 | | 276 | An act to amend Section 81-414, R. C. M. 1947, by modifying the procedure for changing the terms of state land leases. | 228 |
| 121 | | 300 | An act to amend Section 3-1212, R. C. M. 1947, relating to the licensing of nurserymen and defining seasonal nurserymen, and requiring seasonal nurserymen to make application for a license not less than thirty (30) days in advance of doing business within the state of Montana each year. | 229 |
| 122 | | 312 | An act to amend Section 4-341, of the R. C. M. of 1947, relating to fees for beer licenses, by providing a license fee for brewers wherever located whose product is sold or offered for sale within the state; providing said act shall not be construed to conflict with the Montana beer act and containing a severability clause; and repealing all acts and parts of acts in conflict herewith. | 230 |
| 123 | | 326 | An act to amend Section 59-801 and Section 59-802, R. C. M. 1947, relating to mileage of public officers and providing mileage payments at the rate of twelve cents (12c) per air mile for legislators and other state employees when flying an airplane on official business. | 232 |
| 124 | | 345 | An act amending Sections 23-1309 and 23-1302 (1), R. C. M. 1947, by providing that absentee ballot for which application was made after 12 noon on the day next preceding an election shall be rejected and by providing that no applications for absentee ballots shall be issued by the clerk after 12 noon of the day next preceding an election. | 233 |
| 125 | | 385 | An act to amend Section 82-1008, Revised Codes of Montana, 1947, to provide that the state examiner shall have the authority and it shall be his duty to audit the books and accounts of fire districts in unincorporated territories, towns and villages supported by a mill levy; providing for the payment of such audit and providing that such audit shall be filed with the county clerk and recorder. | 234 |
| 126 | | 21 | An act creating a state board of equalization suspense account for the temporary deposit of moneys; authorizing the state board of equalization to refund overpayments of the inheritance tax and all other taxes collected by the board, plus any interest and penalty due the taxpayer, from the suspense account; amending sections 91-4418, 84-4501, 84-4825, 84-1812, 84-1818, R. C. M. 1947, and repealing Sections 84-4953 and 84-4957, R. C. M. 1947. | 236 |
| 127 | | 107 | An act to provide registration of commercial feeds; defining commercial feed and other terms; to provide for labeling commercial feeds; to provide for inspection and sampling of commercial feeds and fees therefore; to provide prohibition against distribution of non-registered, adulterated, or misbranded feeds; to provide for the administration of this act by the commissioner of agriculture and empowering him to make rules and regulations necessary to administration of this act; to provde power in the commissioner to detain, condemn and confiscate feeds being distributed in violation of this act or regulations made thereunder; to provide penalties for violations of this act or regulations; and to take effect and be in force from and after the first day of January, 1964; providing for a sever- | |


HeinOnline -- 1963 vol. I xviii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | ability clause; and repealing Sections 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, R. C. M. 1947. | 244 |
| 128 | | 125 | An act to amend Section 10-111, Revised Codes of Montana, 1947, relating to the bearing of expenses in furnishing free higher education to certain inmates of the Montana children's center, the state industrial school and the state vocational school for girls; raising the expenses to be borne by the above enumerated institutions for each of such students from four hundred dollars ($400) to eight hundred dollars ($800); providing an effective date. | 256 |
| 129 | | 151 | An act to repeal obsolete statutes pertaining to the employment and compensation of the superintendent of banks, superintendent of banks' examiners and clerks, railroad commissioners, employees of the board of railroad commissioners, state engineer, assistant secretary of Carey land act board, the state fire marshal, assistant state fire marshal, first assistant state examiner, deputy state examiners and clerk for the state examiner, marshal of the supreme court, assistant attorneys general, attorney general's law clerk and stenographers; repealing Sections 5-605, 72-106, 72-108, 72-109, 72-110, 81-2011, 81-2014, 82-405, 82-407, 82-408, 82-1012, 82-1205, 82-1206 and 82-1803, Revised Codes of Montana, 1947; providing an effective date. | 257 |
| 130 | | 159 | An act creating and establishing a Montana state game wardens' retirement system; defining the terms 'accumulated deductions', 'beneficiary', 'retired state game warden', 'board', 'contributor', 'final salary', 'actuarial equivalent', 'account', 'involuntary retirement', 'member's annuity', 'optional retirement age', 'retirement age', 'retirement allowance', 'state annuity', 'state game warden'; creating a Montana state game wardens' retirement board; providing for payments into the Montana game wardens' retirement account; providing the board may establish rules and regulations for proper administration, operation and enforcement of this act; defining who shall be members of said retirement system; creating a state game wardens' retirement account; providing for contributions by members of the Montana state game wardens; providing for contributions by the state of Montana; providing for retirement, voluntary retirement, retirement allowance, disability retirement allowance, involuntary retirement allowance, refunds in case of resignation or discharge, payments upon death, payments in case of death from natural causes; providing for monthly payments of retirement allowances; providing for the exemption from taxes and execution of member's annuity; providing for the manner of designating beneficiaries; providing for service in the armed forces of the United States; prohibiting fraud and providing for the manner of correcting errors; providing for restrictions on payments to beneficiaries; providing for the subrogation of the state of Montana to the rights of the members or dependents against certain third parties; providing for payments under other laws; providing for optional retirement allowances; providing that each game warden shall be ineligible to membership in state public employees' retirement system; providing that as to constitutionality the provisions of this act are severable; providing this act shall be in full force and effect from and after its passage and approval; and repealing all acts and parts of acts in conflict herewith. | 257 |
| 131 | | 179 | An act to amend Section 66-815, Revised Codes of Montana, 1947, relating to license and examination fees to practice or teach cosmetology by providing for a license fee for inactive practitioners, and an annual renewal fee for cosmetological establishments. | 267 |
| 132 | | 221 | An act to amend Section 94-35-204 of the Revised Codes of Montana, 1947, to include therein horse, mule, mare, colt, foal, filly and lamb. | 269 |
| 133 | | 249 | An act to provide for the marking of motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date. | 269 |
| 134 | | 254 | An act to authorize and direct the state auditor to deliver certain warrants to the Montana territorial centennial commission. | 270 |

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 135 | | 283 | An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to require a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit. | 271 |
| 136 | | 332 | An act to amend Section 16-2008, R. C. M. 1947, to provide that the board of county commissioners of every county of the state shall be vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county for the purpose of building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water; and providing an effective date. | 272 |
| 137 | 6 | | An act requiring submission of vital statistics information by clerks of the district courts at time of entry of decree of divorce or annulment and providing for transmittal of such information to the state registrar of vital statistics. | 275 |
| 138 | 36 | | An act authorizing the state fish and game commission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses, and containing an expiration date. | 275 |
| 139 | 39 | | An act to amend Section 94-3579, Revised Codes of Montana, 1947, relating to use of firearms by children under the age of fourteen years. | 277 |
| 140 | 60 | | An act amending Section 75-1804, of the Revised Codes of Montana, 1947, removing the March 1 to July 1 limitation on annexation and consolidation of school districts as provided in Section 75-1813, Revised Codes of Montana, 1947, and providing an effective date. | 277 |
| 141 | 62 | | An act to amend Section 82-1008 of the Revised Codes of Montana, 1947, as amended, to provide for an annual examination by the state examiner of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, and deleting therefrom optional provisions with respect to such examinations; and repealing all acts and parts of acts in conflict therewith. | 278 |
| 142 | 114 | | An act to amend Sections 11-725 and 11-728, R. C. M. 1947, pertaining to salaries and qualifications of mayors and aldermen and salaries of city and town treasurers; providing the maximum salary that may be paid to mayors of second and third class cities, mayors of towns, and aldermen of all cities and towns; providing the maximum salary that may be paid to city and town treasurers. | 279 |
| 143 | 115 | | An act to authorize the recording of locations of new highways or controlled access facilities by the state highway commission; providing that improvements, buildings or subdivisions placed upon said lands within the limits of such location may not be taken into consideration for the purpose of assessing compensation for such lands; repealing all acts or parts of acts in conflict herewith; and providing that this act shall be effective from the date of its passage and approval. | 281 |
| 144 | 122 | | An act to amend Section 75-2401, R. C. M. 1947, relating to the re-election of teachers to provide that a board of trustees may terminate the services of a teacher who has attained or will attain the age of sixty-five (65) years and that a board of trustees may continue to employ a teacher until the age of seventy (70) years. | 282 |
| 145 | 151 | | An act to amend Section 81-1408, R. C. M. 1947, relating to the duties of the state forester concerning lumber cutting and scaling. | 283 |
| 146 | 156 | | An act to amend Section 71-123, Revised Codes of Montana, 1947, pertaining to headstones for deceased veterans and the expense of setting up each stone. | 284 |
| 147 | | 22 | An act reorganizing the state treasury fund structure and revising state fiscal procedures for the appropriation, collec- | |


HeinOnline -- 1963 vol. I xx 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | tion, spending and accounting of public and other moneys; amending Sections 79-201, 79-306, 79-304, 79-601, 79-603, 79-813, 79-1011, 79-1015, 79-1202, 79-1203, 79-1206, 79-1208, 79-1211, 79-1212, 79-1213, 79-1214, 79-1401, 79-1403, 62-305, 3-233, 3-408, 3-420, 3-510, 3-602, 3-704, 3-904, 3-1709, 3-1715, 3-1717, 3-1906, 3-1910, 3-2004, 3-2007, 3-2207, 3-2302, 3-2315, 3-2503, 3-2803, 44-509, 44-510, 44-514, 78-501, 78-503, 84-1901, 75-3612, 75-3613, 75-3614, 75-3615, 75-3616, 75-3618, 75-3619, 75-3620, 75-3621, 75-3413, 75-2521, 75-3503, 75-3505, 75-4802, 82-3104, 75-5101, 69-3015, 11-1920, 11-1921, 15-2024, 40-2717, 82-1507, 82-1505, 82-1511, 82-1516, 82-1517, 89-116.1, 89-120, 89-402, 93-2011, 93-2014, 93-2015, 93-2020, 44-410, 44-412, 82-503, 46-105, 84-5212, 46-609, 46-704, 46-707, 46-804, 46-806, 46-911, 52-322, 46-1901 46-1903, 46-1904, 46-1912, 46-1914, 46-1915, 84-5214, 84-2708, 3-2704, 46-904, 46-1006, 46-803, 84-5211, 91-502, 91-504, 91-505, 91-506, 91-507, 91-512, 91-523, 91-526, 66-1237, 69-3404, 66-1307, 66-1311, 66-1314, 66-2333, 66-2104, 66-2106, 66-2203, 66-2204, 66-1008, 66-1009, 66-607, 66-603, 66-608, 66-2503, 66-1527, 66-809, 82-702, 83-709, 66-407, 66-408, 66-108, 66-109 66-513, 66-2403, 66-2407, 66-1405, 66-1410, 66-904, 66-906, 66-909, 66-919, 66-925, 66-2604, 66-2605, 66-2606 46-2306, 46-2331, 27-409, 27-417, 26-121, 60-145, 60-147, 82-308, 78-302, 92-116, 92-119, 92-820, 69-1516, 92-840, 92-902, 92-1005, 92-1119, 92-1334, 92-1358, 92-120, 92-1101, 92-1105, 92-1102, 92-1103, 92-1106, 92-1110, 92-1114, 92-1115, 92-1116, 92-1122, 92-1123, 92-1112, 92-1113, 92-1302, 92-1343, 92-1357, 11-2030, 11-2025, 11-2026, 11-2028, 92-709A, 75-2708, 68-405, 59-1103.1, 59-1104, 59-1005, 31-201, 31-205, 31-206, 31-209, 31-210, 87-111, 87-112, 87-133, 84-5621, 71-901, 4-229, 32-1619, 84-1840, 84-1802, 28-111, 81-1410, 28-123, 28-124, 81-1601, 1-501, 84-1819, 5-910, 75-3701, 81-1001, 81-1005, 75-1315, 19-121, 53-122, 94-35-152.13, 80-720, 38-210, 80-322, 66-1812, 28-304, 75-706, 75-807, 75-811, 75-723, 89-401, 27-313 R. C. M. 1947; and repealing Sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501 through 79-505, 3-203, 78-203 through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701 through 78-727, 78-728 through 78-736 enacted as Sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016, 81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231, 80-115, 80-747, R. C. M. 1947. | 285 |
| 148 | | 98 | An act to amend Sections 26-202.1, 26-215, 26-510, Revised Codes of Montana, 1947, relating to hunting and fishing licenses, classifications, fees, and powers and duties thereunder. | 448 |
| 149 | | Sub. 101 | An act providing for supplemental publication by radio broadcast and television broadcast of a summary of any notice required by law to be published by any official of the state or any of its political subdivisions. | 452 |
| 150 | | 116 | An act to amend Section 53-615, R. C. M. 1947, relating to fees on trucks, tractors, trailers, semitrailers and other vehicles; providing for certain exemptions therefrom; amending Section 53-642, R. C. M. 1947, relating to movement of special mobile equipment over the highways and redefining the term 'special mobile equipment'; providing that equipment and machinery which cannot be self-propelled or towed upon the highways of this state shall be exempt from the terms and provisions of Title 53, R. C. M. 1947. | 453 |
| 151 | | Sub 139 | An act increasing the compensation of members and employees of the Montana liquor control board; amending Section 4-105, R. C. M. 1947, relating to the per diem compensation to be paid to members of said board; and amending Section 4-108, R. C. M. 1947, relating to the maximum annual salaries to be paid to employees of said board. | 458 |
| 152 | | 182 | An act to amend Sections 75-4138 and 75-4139, R. C. M. 1947, relating to the establishment of high schools to provide that a county high school may establish a branch of the county high school; providing an effective date. | 460 |
| 153 | | 184 | An act amending Section 92-411, R. C. M. 1947, to define 'employee' as a recipient of general relief who is performing work for a county of this state. | 461 |


HeinOnline -- 1963 vol. I xxi 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 154 | | 210 | An act to establish a stable and uniform basis for interstate cooperation in driver licensing and the reporting of convictions and to be known as the driver license compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining 'licensing authority' and 'executive head'; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith. | 462 |
| 155 | | 231 | An act amending Section 15-1001, R. C. M. 1947, to provide for corporate acts to be accomplished by resolution signed by all of the stockholders and/or directors without the formality of a regular meeting of stockholders or directors. | 469 |
| 156 | | 239 | An act to amend Section 32-2001 of the Revised Codes of Montana, 1947, by extending the policy of the state to include controlling of access to throughways and intersections with throughways; amending Section 32-2002 of the Revised Codes of Montana, 1947, by providing definitions for the terms 'arterial highway', 'throughway', and 'throughway intersection area' and by including in the term 'controlled access highway', 'portions of throughways and roads, streets and highways within a throughway intersection area', amending Section 32-2003 of the Revised Codes of Montana, 1947, by providing for control of access to throughways or roads, streets or highways within a throughway intersection area and by providing that no portion of a throughway or road, street or highway within a throughway intersection area shall be designated as a controlled access highway except upon petition of the governing body of cities, towns or counties and providing the petition to be irrevocable except upon concurrence of the state highway commission; amending Section 32-2006 of the Revised Codes of Montana, 1947, by providing for the acquisition of property for controlled access highways or facilities; amending Section 32-2007 of the Revised Codes of Montana, 1947, by providing for elimination of crossings with controlled access highways or facilities; amending Section 32-2008 of the Revised Codes of Montana, 1947, relating to service roads by relating to controlled access highways as well as 'facilities'; amending Section 32-2009 of the Revised Codes of Montana 1947, relating to marking with signs by relating the same to controlled access highways as well as 'facilities'; amending Section 32-2010 of the Revised Codes of Montana, 1947, relating to violations by prohibiting connections with a controlled access highway or facility except by permission of the state highway commission and the local governing body having jurisdiction over the highway or facility; repealing all acts and parts of acts in conflict herewith; providing that this act shall be in full force and effect from the date of its passage and approval. | 470 |
| 157 | | 242 | An act to accept the retrocession by the United States of America of concurrent police jurisdiction over the rights-of-way of the Blackfeet highway and over the rights-of-way of its connections with the Glacier national park road system on the Blackfeet Indian reservation in the state of Montana; providing an effective date. | 477 |
| 158 | | 328 | An act to amend Section 11-966, R. C. M. 1947, to provide that a city or town council has power to contract an indebtedness on behalf of a city or town for building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water. | 477 |
| 159 | | Sub 71 | An act to provide that all meetings of public or governmental bodies, boards, bureaus, commissions or agencies | |


HeinOnline -- 1963 vol. I xxii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public and providing exceptions. | 480 |
| 160 | | Sub. 295 | An act amending Sections 41-1201 and 41-1202, R. C. M. 1947, changing the membership of the apprenticeship council; providing that the council is a part of the department of labor and industry; providing for the election of a chairman and vice-chairman of the council; authorizing the commissioner of labor and industry, subject to the approval of the council, to appoint a director of apprenticeship and other clerical, technical and professional staff as may be necessary; and providing that the director of the council shall serve as its secretary without a vote. | 482 |
| 161 | 18 | | An act permitting the creation of professional service corporations, and amending Sections 15-103 and 15-104, R. C. M. 1947. | 485 |
| 162 | 35 | | An act to amend Section 75-4230, R. C. M. 1947, to provide that any time an inmate of the Montana children's center attends the public school in Twin Bridges, the latter school shall be reimbursed from the state public school equalization fund at the rate of four hundred dollars ($400.00). | 492 |
| 163 | 57 | | An act to amend Section 93-1904, R. C. M. 1947, relating to court reporters furnishing copy from stenographic notes; raising cost thereof from five cents ($.05) and seven and one-half cents ($.075) per folio to seven and one-half cents ($.075) per folio. | 495 |
| 164 | 58 | | An act to amend Section 69-1343, R. C. M. 1947, by changing the definition of 'subdivision' as used therein; and amending Section 69-1345, R. C. M. 1947, to provide for changing the requirements for construction and occupancy of buildings in a 'subdivision', and to amend Section 69-1342, R. C. M. 1947, to provide for correct word usage. | 496 |
| 165 | 73 | | An act to amend Section 84-4202, Revised Codes of Montana, 1947, relating to the duty of county treasurers in collection of personal property taxes not a lien on real property; providing that personal property in addition to that against which the tax is assessed is subject to levy and sale; providing for the collection of taxes by the institution of a civil action in addition to other methods; providing that the county shall have a general lien, dependent on possession, upon any monies in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; repealing all acts or parts of acts in conflict herewith; providing an effective date. | 498 |
| 166 | 74 | | An act to amend Section 84-3807, Revised Codes of Montana, 1947, relating to judgments and liens for taxes against personal property; providing for the attachment of tax liens on personal property acquired by the tax debtor after assessment; providing the procedure for collecting and enforcing payment of property taxes; repealing all acts or parts of acts in conflict herewith. | 500 |
| 167 | 82 | | An act to require a compulsory waiting period between the time of service of process and the hearing in a divorce action, and for a stay of proceedings to attempt reconciliation. | 500 |
| 168 | 84 | | An act to provide rules for the recognition of ex parte foreign divorces and establishing certain presumptions as to domicile. | 501 |
| 169 | 85 | | An act amending Section 48-202 and 48-203, R. C. M. 1947, relating to annulment of a marriage; providing that a marriage may be annulled when a part was under the age of majority at time of marriage; establishing the legitimacy of children of annulled marriages and providing for care, custody and support of said children; repealing Sections 48-204 and 48-205, R. C. M. 1947. | 502 |
| 170 | 100 | | An act to provide for the transportation of coal by pipeline carrier; defining common carriers of coal; providing for the regulation of said carriers by the board of railroad commissioners of Montana; providing for hearings before | |


HeinOnline -- 1963 vol. I xxiii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | said board of railroad commissioners; providing the right of eminent domain to construct necessary pipelines; prohibiting discrimination of rates and transportation; and providing a penalty for a violation of the act, by amending Sections 8-201, 8-202, 8-204, 8-205, 8-206, 8-207, and 8-210, Revised Codes of Montana, 1947. | 504 |
| 171 | 113 | | An act amending Section 81-1705, Revised Codes of Montana, 1947, to allow semi-annual payment of royalties on state oil and gas leases. | 509 |
| 172 | 117 | | An act to amend Section 32-711, R. C. M. 1947, which relates to the control and management of bridges by boards of county commissioners; to provide that boards of county commissioners may make repairs to stream beds, water courses and the banks thereof when there is danger that a bridge may be damaged or lost because of erosion or changes in the courses of such streams. | 510 |
| 173 | Sub. 120 | | An act to provide for reciprocal agreements with other states waiving citizenship requirements for auctioneers and providing for the place of posting bond by nonresident auctioneers. | 511 |
| 174 | 125 | | An act to amend Chapter 32 of Title 94 of the Revised Codes of Montana, 1947, relating to crimes involving malicious injuries to railroads, highways and other property, by adding thereto a new section to be numbered 94-3211, making it a felony for any person to wilfully and maliciously displace, remove, injure or destroy any public telephone instrument or part thereof or equipment or facilities associated therewith, or to enter or break into any coin box associated therewith, or to wilfully and maliciously cut, break, displace, remove, injure or destroy any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or electric power line, cable, pole, conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto, and providing a penalty therefor, and by amending Section 94-3203 of the Revised Codes of Montana, 1947, making it a misdemeanor to tamper with telegraph, telephone and electric systems, by deleting therefrom so much thereof as makes it a misdemeanor for any person to wilfully and maliciously displace, remove, injure, destroy or obstruct any telegraph, telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, and providing it shall be a misdemeanor to wilfully or maliciously tamper with electric power lines; repealing Section 94-3209 of the Revised Codes of Montana, 1947; repealing all acts and parts of acts in conflict herewith; and providing an effective date. | 511 |
| 175 | 196 | | An act to amend Section 75-1632, R. C. M. 1947, relating to duties of school trustees; to provide for accounting and for the disposition of rental funds as to school owned employee housing. | 514 |
| 176 | 204 | | An act to amend Section 75-1630, R. C. M. 1947, relating to transfer of funds between school districts; to provide that parents denied permission to have children attend schools outside district of residence may pay the costs and have the children attend the other school; and providing that a waiver of costs by a district receiving pupils from other districts applies equally to all pupils. | 518 |
| 177 | 99 | | An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for re-conveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and | |


HeinOnline -- 1963 vol. I xxiv 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | sale; relating to the applicability of mortgage laws to trust indenture transactions; amending Sections 93-6005, 93-6006, and 93-6007, R. C. M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date. | 522 |
| 178 | | 92 | An act to amend Section 53-122, R. C. M. 1947, relating to registration fees of motor vehicles and the disposition thereof by providing for the division of license or registration fees between the county and incorporated cities and towns within the county in a pro rata manner; and restricting the use of the monies by cities, towns, and counties. | 533 |
| 179 | | 133 | An act to amend Sections 94-301 and 94-304, R. C. M. 1947, to provide that wilful nonsupport or neglect of a child or ward under sixteen years of age is a felony and prescribing penalties. | 539 |
| 180 | | 183 | An act amending Section 71-307, R. C. M. 1947, to require the county department of public welfare to provide coverage under the workmen's compensation act for recipients of general relief working for the county; and providing a penalty when a recipient of general relief refuses to perform work assigned to him. | 540 |
| 181 | | 189 | An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts. | 542 |
| 182 | | 193 | An act to amend Sections 75-1706 and 75-1723, R. C. M. 1947, by setting forth procedure for non-operating school district budget. | 543 |
| 183 | | 200 | An act to amend Sections 15-108, 15-201, 15-204, 15-302, and 15-401, Revised Codes of Montana, 1947, to provide that the number of directors of private corporations created under Chapter 1 of Title 15 of the Revised Codes of Montana, 1947, may be fixed by by-laws; providing for amendments to the articles of incorporation and by-laws so as to provide that the number of directors may be fixed by the by-laws; providing for the filling of vacancies in the offce of director created by an increase in the number of directors; repealing all acts and parts of acts in conflict with this act; and providing for an effective date for this act. | 546 |
| 184 | | 217 | An act to amend Sections 25-301, 25-303 and 25-306, R. C. M. 1947, to provide for increases in fees of justices of the peace in civil actions; to provide for increases in fees of justices of the peace in criminal actions; to provide for increases in salaries of justices of the peace in certain townships; repealing all acts and parts of acts in conflict therewith. | 551 |
| 185 | | 219 | An act to require a deposit as evidence of good faith by bidders on state land leases. | 554 |
| 186 | | 237 | An act relating to the corporation license; providing for the determination of corporation license tax liability on deficiencies and overpayments; providing for periods of limitation—waiver; amending Section 84-1504, R. C. M. 1947, to provide for an automatic extension; amending Section 84-1505, R. C. M. 1947, to provide for computation of tax and return by the taxpayer by the fifteenth day of the fifth month following the close of the taxable period; providing for a ten per cent (10%) penalty; providing six per cent (6%) per annum interest rate; amending Section 84-1508, R. C. M. 1947, to delete the procedure for handling tax understatements. | 554 |
| 187 | | 238 | An act providing for the destruction of tax records. | 561 |
| 188 | | 243 | An act to provide that police courts, municipal courts, justice courts and district courts shall have concurrent original jurisdiction in proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years; and providing for penalties; and amending Sections 32-21-163 and 32-21-164, R. C. M. 1947. | 551 |


HeinOnline -- 1963 vol. I xxv 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 189 | | 309 | An act to amend Rule 4, M. R. Civ. P., relating to persons subject to jurisdiction; process, service, repealing the following sections of the Revised Codes of Montana, 1947, Sections 53-204, 93-3004, 93-3009, 93-3010, 93-3019, 93-6206, 93-6207 and 93-6208, and repealing all acts and parts of acts in conflict herewith. | 563 |
| 190 | | 310 | An act to amend Sections 81, 82 and 83 of Chapter 13, Session Laws of Montana for 1961, by striking from Section 81, Table A, the language 'quiet title (including actions to establish title to property granted to heirs of deceased entrymen)—Sections 93-6201 to 93-6239, and substituting therefor the language 'actions to establish title to property granted to heirs of deceased's entrymen—Sections 93-6225 to 93-6239'; to amend Section 82, Chapter 13, Session Laws of 1961 by adding to Table B in the list of statutes superseded by Rule 4 the following sections: 53-204; 93-3004; 93-3009; 93-3010; 93-3019; 93-6206; 93-6207; and 93-6208; by amending Section 83 of Chapter 13 of the Session Laws of 1961, Table C, by adding to the list of statutes superseded by the rules Sections 53-204, Rule 4; 93-3004, Rule 4; 93-3009, Rule 4; 93-3010, Rule 4; 93-3019, Rule 4; 93-6206, Rule 4; 93-6207, Rule 4; 93-6208, Rule 4. | 574 |
| 191 | | 338 | An act defining 'subdivision' and 'subdivided lands'; providing for the regulation, supervision and control of subdivisions by the state real estate commissioner and defining his duties and powers relative thereto; and providing a penalty for the violation of this act. | 575 |
| 192 | | 366 | An act to amend Initiative Measure No. 54 adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, as amended by Chapter 44, Session Laws of 1957, relating to Section 10 thereof, by providing a new date for the submission of applications for payment of the Korean war honorarium to be January 1, 1964; repealing all acts and parts of acts in conflict herewith; providing an effective date. | 581 |
| 193 | | 392 | An act to amend Section 45-1003, R. C. M. 1947, relating to laborers' and materialimen's liens on oil and gas wells, leaseholds and pipelines, to provide the same shall arise, be perfected, and have the same priority as materialmen's and mechanics' liens; and repealing Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947. | 581 |
| 194 | | 396 | An act to amend Section 16-1907, R. C. M. 1947, relating to emergency burgets for counties, to provide that emergency budgets for counties of the first, second, third and fourth class shall not exceed two hundred thousand dollars ($200,000) for the period ending July 1, 1963; and providing an effective date. | 582 |
| 195 | 33 | | An act relating to the nursing practice act, increasing fees for license and renewal of license for professional registered nurses and licensed practical nurses; amending Sections 66-1228, 66-1234, and 66-1236, R. C. M. 1947. | 586 |
| 196 | 41 | | An act to amend Articles VI and XI of Section 89-3201, R. C. M. 1947, relating to the Columbia Interstate Compact. | 589 |
| 197 | 56 | | An act providing that information and data concerning infant morbidity and mortality may be provided to the state board of health, the Montana Medical Association and any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee, for the purpose of reducing infant morbidity and mortality through study and medical research; providing that no liability shall arise by reason of having furnished any such information or data, or by reason of having released or published the findings and conclusions of such groups to advance medical research and education, or by reason of having released or published generally a summary of such studies; providing that the identity of any person whose condition or treatment is the subject of any information or data provided under the terms of this act shall not be revealed under any circumstances; and providing that the information and data received under the terms of this act and the conclusions resulting from studies conducted under the terms of this act shall be privileged communications. | 591 |


HeinOnline -- 1963 vol. I xxvi 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 198 | 72 | | An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing Section 38-118, Revised Codes of Montana, 1947. | 592 |
| 199 | 103 | | An act amending Section 84-4903, R. C. M. 1947, relating to personal income tax, deleting the provision as to taxability of nonresident officers of corporations; amending Section 84-4910, R. C. M. 1947, to provide for an additional exemption to income tax only in the event a separate return is made by taxpayer and spouse has no gross income and is not the dependent of another taxpayer; amending Section 84-4956, R. C. M. 1947, to provide for examination of income tax returns, hearings and return of overpayments at six per cent (6%) per annum under certain conditions. | 593 |
| 200 | 83 | | An act abolishing the actions for breach of promise of marriage and for alienation of affections and repealing Section 17-319, R. C. M. 1947. | 598 |
| 201 | 102 | | An act amending Section 84-4914, R. C. M. 1947, relating to personal income tax, to require the filing of income tax returns upon certain conditions and to provide for the election of filing joint returns and amending the procedure for filing returns; amending Section 84-4922, R. C. M. 1947, to provide that revision on income tax returns may be made within five (5) years from due date; amending Section 84-4924, R. C. M. 1947, to provide for a six per cent (6%) per annum interest rate on unpaid income taxes and providing an effective date. | 600 |
| 202 | 131 | | An act requiring and providing for filing of corner records containing information on public land survey corners by a licensed land surveyor; defining terms; providing for filing and filing fees, and making records available to the public; allowing licensed land surveyors to file information on any property corner; requiring surveyors to reconstruct and perpetuate monuments of public land survey corners; directing that unconstitutionality of a part of this act shall not affect or impair the remainder, and repealing all acts and parts of acts inconsistent herewith. | 604 |
| 203 | 134 | | An act to amend Section 75-1802, Revised Codes of Montana, 1947, relating to classifications of school districts and providing that three times the number of school census children may be used to compute the population of the school district. | 607 |
| 204 | 142 | | An act to redefine occasional transportation, 'for hire' operation, and prima facie acts deeming a person to be a motor carrier; increasing fines imposed for violations; and amending Sections 8-101, 8-119, and 8-121, R. C. M., 1947. | 608 |
| 205 | 143 | | An act providing for appointment of a supervisor of motor carriers by the board of railroad commissioners; describing the duties, qualifications and powers of such supervisor; and amending Section 8-103, R. C. M., 1947. | 611 |
| 206 | 144 | | An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declaration with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending Section 53-129, R. C. M. 1947, as amended; repealing Section 53-625, R. C. M. 1947, as amended; providing an effective date. | 613 |
| 207 | | Sub. 7 | An act to amend Section 68-901, R. C. M. 1947, relating to the allowances to be paid members of the public employees' retirement system of the state of Montana upon their retirement from state service. and to amend Section 68-1101, R. C. M. 1947, relating to the benefits payable upon the death of members of the public employees' retirement system. | 625 |
| 208 | | Sub. 42 | An act to provide that a joint tenancy, ownership of property may be established by conveyance or transfer of | |


HeinOnline -- 1963 vol. I xxvii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | such property without the necessity of transfer to or through any third person. | 632 |
| 209 | | Sub. 172 | An act to amend Section 75-2701, Revised Codes of Montana, 1947, relating to earnable compensation of the teachers' retirement system, and providing that full compensation received after July 1, 1961, may be used in computing benefits, and repealing all acts and parts of acts in conflict herewith. | 632 |
| 210 | | Sub. 397 | An act authorizing boards of county commissioners to issue funding bonds after July 1, 1963, to fund outstanding county warrants as of June 30, 1963; providing the term of funding bonds; providing for a public hearing; and providing an effective date. | 636 |
| 211 | | Sen. Sub. for H.B. 303 | An act to amend Section 32-2137, R. C. M. 1947, relating to traffic control signals. | 638 |
| 212 | | 69 | An act amending Section 25-501, R. C. M. 1947, and amending Section 93-303, and repealing Section 72-106, to increase the salaries of elected state executive officials, supreme court judges, district court judges and others, and providing for an effective date. | 640 |
| 213 | | 117 | An act providing for the collecting and processing of fees due the state for the care of residents in certain state schools and public institutions; amending Sections 10-119, 38-108 and 38-815, R. C. M. 1947; and repealing Sections 38-118, 38-214, 38-304, 38-409, 38-411, 38-412, 38-707, 38-708, 38-808, 38-809, 38-809.1, 38-812, 80-211, 80-212, and 80-213, R. C. M. 1947. | 641 |
| 214 | | 119 | An act to amend Section 89-121 of the Revised Codes of Montana, 1947, relating to the authority of the state water conservation board to appropriate and store, divert and control the unappropriated waters of the state, and providing for recording of notice and priority of right. | 645 |
| 215 | | 234 | An act to provide for the reciprocal and expeditious disposition of detainers filed against inmates of prisons or other correctional institutions of party states; to provide for the speedy trial of persons confined in a penal or other correctional institution of a party state on charges and detainers based on untried indictments, informations or complaints and to provide for the final disposition of such charges and detainers; to provide that temporary custody of such prisoners may be made available to appropriate officers of party states for trial; to provide that escape from such temporary custody shall be punishable by confinement in the state prison for a term of not less than one year nor more than ten years; to provide for the appointment of a coordinator of this agreement; providing for an effective date and a repealing clause. | 646 |
| 216 | | 250 | An act to amend Section 75-2707, R. C. M. 1947, and Section 75-2709, R. C. M. 1947, relating to the minimum retirement benefits paid by the teachers' retirement system under the present system and under the former retirement system; to provide for an increase in the minimum annual retirement allowance and to provide for the elimination of the expiration date of the present employers' contributions. | 654 |
| 217 | | 271 | An act to amend Section 4-403, R. C. M. 1947, as amended, relating to the issuance of retail liquor licenses; limiting the number of licenses and lapse and cancellation of same; increasing the population figures for limiting licenses in cities, towns; and providing for limited licenses on population basis in counties. | 668 |
| 218 | | 272 | An act to amend Section 91-4414 of the Revised Codes of Montana, 1947, as amended by Chapter 105 of the Laws of the Thirty-third Legislative Assembly, 1953, relating to exemptions from inheritance tax, by amending subsection (1) thereof relating to transfers totally exempt. | 670 |
| 219 | | 273 | An act to amend Section 32-1626 to establish the Lewis and Clark highway from the Idaho-Montana state line to the North Dakota state line and repealing all acts and parts of acts in conflict herewith. | 673 |


HeinOnline -- 1963 vol. I xxviii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 220 | | 275 | An act to amend subsection (2) of Section 16-1904, R. C. M. 1947, which pertains to the manner in which the county commissioners shall fix the amounts to be expended for each item in the annual county budget and which provides that the amount appropriated and authorized for any budget item must not exceed by more than ten per centum (10%) the amount actually expended for that item in the budget for the fiscal year immediately preceding; to provide that the amount appropriated and authorized for any budget item must not exceed by more than five per centum (5%) the amount appropriated and authorized for such budget item in the budget for the fiscal year immediately preceding. | 673 |
| 221 | | 296 | An act amending Section 92-1401, Revised Codes of Montana, 1947, enacted as Section 1, Chapter 21, Laws of 1961, to apply to all employees covered by workmen's compensation; repealing Section 92-1405, Revised Codes of Montana, 1947, enacted as Section 6, Chapter 21, Laws of 1961; and amending Section 92-1406, Revised Codes of Montana, 1947, enacted as Section 7, Chapter 21, Laws of 1961, to provide for an industrial accident rehabilitation account in the agency fund and to provide for mandatory payments to said account by employers coming under Plan No. 1 of the workmen's compensation act, by Plan No. 2 insurance carriers, and by the industrial insurance account in the agency fund of the state of Montana. | 675 |
| 222 | | 304 | An act to amend Section 75-4601, R. C. M. 1947, providing for the election of additional trustees to the boards of trustees of high school districts; providing for the establishment of trustee nominating districts; containing a repealing clause. | 677 |
| 223 | | 313 | An act to amend Section 84-1812, R. C. M. 1947, relating to distribution and use of proceeds of gasoline license tax by providing that one per centum (1%) of all receipts shall be deposited and credited to the state park fund, and the balance shall be deposited and credited, seventy-five per centum (75%) to state highway fund and twenty-five per centum (25%) to the gasoline license drawback fund, and providing that the one per centum (1%) deposited and credited to the state park fund be used for creation, improvement, and maintenance of state parks which are used for motor boating. | 680 |
| 224 | | 314 | An act to amend Section 84-1818, R. C. M. 1947, to remove gasoline used in motor boats from entitlement to refund of gasoline license tax. | 683 |
| 225 | | 317 | An act amending Sections 3-103, 41-1603, 78-101, 81-209, 81-1403, 81-2011, 82-1011, 84-702, 92-104, and 94-9825, R. C. M. 1947, to increase salaries of elected and appointed officials. | 687 |
| 226 | | 406 | An act to provide that where any county has not completed the classification and appraisal program as provided in Section 84-429.7, R. C. M. 1957 (sic), due to lack of funds, county commissioners may levy up to two mills (2) in the 1963-64 fiscal year to complete the program. | 691 |
| 227 | | Sub. 413 | An act to amend Section 84-708, R. C. M. 1947, relating to the powers and duties of the state board of equalization; requiring the state board of equalization to call an annual meeting of all county assessors; providing for area schools for appraisers and assessors; and requiring one or more members of the state board of equalization to visit one fourth (¼) of the counties of the state annually and visit each county at least once every four (4) years. | 693 |
| 228 | | Sub. 305 | An act to amend Section 31-135, R. C. M. 1947, to provide for an examination for an applicant for renewal of an operator's or chauffeur's license on a time interval basis; and providing for an effective date. | 698 |
| 229 | 5 | | An act to amend Section 93-302, R. C. M. 1947, to increase the number of district judges in the fourth judicial district from two to three. | 699 |
| 230 | 30 | | An act to amend Sections 69-3502 and 69-3505, Revised Codes of Montana, 1947, relating to motorboat and vessel regulation. Providing for an effective date. | 700 |


HeinOnline -- 1963 vol. I xxix 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 231 | 55 | | An act to amend Section 89-1001, R. C. M. 1947, to provide that a water commissioner shall be appointed to distribute decreed water rights by application of fifteen per cent (15%) of the owners of the water rights affected, or, under certain circumstances at the discretion of the judge of the district court. | 702 |
| 232 | 80 | | An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending Section 48-118.1, R. C. M. 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing Sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R. C. M. 1947. | 704 |
| 233 | 81 | | An act imposing upon the father of an illegitimate child a duty of support; establishing a civil action for the determination of parentage of an illegitimate child. | 712 |
| 234 | Sen. Sub. for Sen. Sub. 87 | | An act to permit the successor in interest to the rights of a licensed water well contractor under a contract for water well construction to engage in the water well construction business to the extent necessary to fulfill said contractor's obligations and providing conditions therefor; amending Section 66-2602, R. C. M. 1947, as amended, to permit compliance with the examination and licensing provisions of the Montana water well contractor's license act by any one member of a firm, co-partnership or association or the manager of a corporation; amending Section 66-2605, R. C. M. 1947, as amended, to make permissive the exacting of a fee for copies of board rules and regulations; and amending Section 66-2606, R. C. M. 1947, as amended, to permit the temporary licensing of a water well contractor prior to examination for competency and providing conditions therefor. | 714 |
| 235 | 92 | | An act to amend Section 4-332, R. C. M. 1947, which is a part of the Montana beer act, authorizing issuance of special permits to sell beer, at the discretion of the Montana liquor control board, to posts of nationally chartered veterans' organizations and to lodges of recognized national fraternal organizations, not otherwise licensed; and to authorize issuance of special permits to sell liquor, at the discretion of the Montana liquor control board, to posts of nationally chartered veterans' organizations and to lodges of recognized national fraternal organizations, not otherwise licensed. | 718 |
| 236 | 97 | | An act relating to credit unions; creating new sections to provide a comprehensive revision and consolidation of the laws of the state of Montana relating to credit unions; regulating the incorporation, formation, operation and supervision of the affairs of credit unions; providing a saving clause; and repealing Title 14, Chapter 1, Revised Codes of Montana, 1947, as amended, and all other acts and parts of acts in conflict herewith. | 720 |
| 237 | 101 | | An act amending Section 84-4907, R. C. M. 1947, relating to nonresident taxpayers personal income tax and deductions therefrom; providing for the proration of deductions. | 738 |
| 238 | 107 | | An act constituting the several district courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court | |


HeinOnline -- 1963 vol. I xxx 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the constitution of the state of Montana, Article 8, Section 1, Section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation. | 739 |
| 239 | 135 | | An act to amend Section 71-222, R. C. M. 1947, which concerns per capita and millage taxes to be levied for support of the county poor fund and which forbids the expenditure of any part of the county poor fund for maintenance or improvement of any building so long as the fund is needed for relief or public assistance within the county; to provide that expenditures for maintenance or improvement of county buildings used directly for care of the poor may be made out of any monies in the county poor fund where such maintenance or improvement is required by order of the state board of health and approved by the public welfare department; containing a repealing clause. | 746 |
| 240 | 165 | | An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in action against public bodies, and providing for the reduction of awards to policy limits where sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith. | 748 |
| 241 | 169 | | An act to amend Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, by adding Sections 15-1119 to 15-1130 both inclusive, Revised Codes of Montana, 1947; relating to the involuntary winding up or dissolution of private corporations created under the laws of Montana upon complaint by a shareholder; providing judicial procedure therefore (sic); providing the grounds and reasons therefore (sic); authorizing appointment of receiver in actions therefore (sic); providing that owners of fifty per cent (50%) or more of the stock of corporations may avoid dissolution by purchase of shares of complaining stockholder at fair cash value thereof; providing for judicial determination of the fair cash value of stock of corporation; providing act shall be liberally construed; providing manner for winding up or dissolving corporation; making act applicable to existing corporations as well as those created hereafter; repealing all acts or parts of acts in conflict herewith; amending Section 15-1101, Revised Codes of Montana, 1947; providing a severability clause; and providing an effective date. | 749 |
| 242 | 189 | | An act relating to printing for the state of Montana, amending Sections 82-1137 and 82-1138, R. C. M. 1947, providing requirements for responsible bidders; providing that state printing be done within the state if adequate and responsible bidders are available; and if the lowest bid of a Montana resident responsible bidder is not more than 2% higher than the lowest bid of a nonresident; providing penalties for violations of the act. | 753 |
| 243 | | 81 | An act to allow trainable mentally retarded children to be included within the responsibility of the public schools and allow school districts to provide special classes or services for such children; and amending Sections 75-5001 and 75-5003, R. C. M. 1947. | 755 |
| 244 | | 94 | An act relating to the disposition of unclaimed property and making uniform the law with reference thereto; making provision for classifying such property as abandoned and setting up provisions of law for handling such property so as to protect the interests of the original owners, relieve the holders of annoyance, expense and liability, preclude multiple liability, and preserve any windfalls that may result from abandonment to the state of Montana; providing that the funds becoming available to the state under the pro- | |


HeinOnline -- 1963 vol. I xxxi 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | visions of this act shall be deposited in the public school fund; and providing penalties for violations of this act. ..... | 758 |
| 245 | | 135 | An act to amend Sections 53-114 and 84-406, R. C. M. 1947, to provide that all motor vehicles shall be assessed for taxation purposes on the first day of January of each year. .. | 771 |
| 246 | | 262 | An act to enable boards of county commissioners to designate zoning districts in certain areas lying outside the corporate limits of cities and towns, and to adopt zoning regulations for these zoning districts, and to create zoning commissions and zoning boards of adjustment for these districts, and repealing Sections 11-2710, 11-3852, and 11-3854, R. C. M. 1947, and all acts and parts of acts in conflict herewith. ..... | 774 |
| 247 | | 302 | An act to clarify the advisory functions and jurisdiction of city planning boards and city-county planning boards under provisions of title 11, Chapter 38, R. C. M. 1947, by amending Sections 11-3801, 11-3803, 11-3808, 11-3810, 11-3813, 11-3818, 11-3820, 11-3824, 11-3825, 11-3828, 11-3830, 11-3831, 11-3833, 11-3834, 11-3840, 11-3842, 11-3843, 11-3844, 11-3845, 11-3846, 11-3847, 11-3848, 11-3851, and 11-3855, R. C. M. 1947; by adopting a saving clause; and by repealing Sections 11-3832, 11-3835, 11-3836, 11-3837, 11-3838, 11-3839, 11-3852, 11-3854, 11-3856, 11-3857 and 11-3858, R. C. M. 1947. ..... | 782 |
| 248 | | Sen. Sub. for 355 | An act relating to group life and health insurance for state officers and employees and providing for payroll deductions. ..... | 794 |
| 249 | | 367 | An act amending Section 44-213, Revised Codes of Montana, 1947, to allow city and county governments to contract with the state board of education of Montana to establish joint or regional libraries; and providing an effective date. .. | 795 |
| 250 | | 56 | An act providing for the application, qualifications, bonding, licensing, supervision and regulation of real estate brokers and real estate salesmen; providing for the collection and disposition of fees; providing for a state real estate commission and defining its powers and duties; providing reciprocity of licenses, examination and consent to suit by nonresidents; providing grounds for denial, revocation or suspension of licenses; providing hearing procedure; providing for appeals from decisions of the commission and district court; prescribing fees and their disposal; providing penalties for the violation of this act or of any rule or regulation issued by the commission; containing a severability clause; repealing Sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; providing Section 94-1822 of the Revised Codes of Montana of Montana of 1947 shall not be amended, modified, or repealed by this act; and containing an effective date for this act; and repealing all acts and parts of acts in conflict herewith. ..... | 796 |
| 251 | | 174 | An act to amend Section 75-1630, R. C. M. 1947, relating to school attendance in districts other than that of residence and providing for disapproval if there is not sufficient room. ..... | 814 |
| 252 | | 255 | An act relating to the acquisition, erection, equipment, enlargement and improvement of housing and other revenue-producing facilities at units of the University of Montana, and the borrowing of funds therefor by the regents by the issuance and sale of negotiable bonds and other securities and the making of purchases on time, payable solely from net income from rents and board, receipts from charges, admissions or fees for the facilities, and gifts, contributions and grants of funds, without obligating the state of Montana or using state funds except as provided, and the provision of security for such borrowing, and the refunding of outstanding obligations; repealing Sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947. ..... | 818 |
| 253 | | 335 | An act to provide for the financing of soil conservation districts by the levy of assessments; providing the procedure therefor; providing an effective date. ..... | 823 |


HeinOnline -- 1963 vol. I xxxii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| 254 | | 358 | An act amending Sections 80-816 and 80-920, R. C. M. 1947, to increase fees paid by counties for the state industrial school and the state vocational school for girls; and depositing proceeds under section 80-816, R. C. M. 1947, in the sinking fund. | 826 |
| 255 | | 359 | An act providing for the construction of a physical education building at the state industrial school, allowing the borrowing of money or issuance of bonds or other securities for such purpose and providing for repayment of the same. | 829 |
| 256 | | 360 | An act amending Section 79-1202, R. C. M. 1947, to allow the state board of land commissioners to invest in bonds or other securities issued for construction of a physical education building at the state industrial school. | 830 |
| 257 | | 426 | An act authorizing the state board of examiners to borrow up to one million dollars ($1,000,000) for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building of the state of Montana at Helena, Montana; providing for the issuance of bonds, indentures and/or notes; dedicating income from capitol building land grant for repayment of loans; enumerating the power and duties of the state board of examiners in carrying out the provisions of this act; and providing for an effective date and a severability clause. | 833 |
| 258 | Sub. 45 | | An act to establish the policy of the state of Montana on protection of fishing streams; providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission and for review of such plans; and providing for arbitration of disagreements between the fish and game commission and the agency proposing such projects. | 836 |
| 259 | | 322 | An act continuing the Montana Territorial Centennial Commission as a temporary agency of state government; prescribing the powers of the commission and appropriating moneys for the operation of the commission. | 838 |
| 260 | Hse. Sub. for S.B. 109 | | An act revising Chapter 4, Title 81, R. C. M. 1947, to change certain requirements and provisions for the leasing of state lands by amending Sections 81-401, 81-402, 81-405, 81-406, 81-407, and 81-433, R. C. M. 1947, relating to the policy as to appraisal and leasing of state land, the leasing of state lands and the basis thereof, the renewal of leases and preference rights of lessees, the fixing of the value of improvements placed on leased land by lessees, the qualifications of lessees and the term of leases, and the formula for determining rentals on state grazing lands; and by repealing Section 81-417, R. C. M. 1947, and Section 2 of Chapter 284, Laws of the Thirty-sixth Legislative Assembly of Montana, 1959, compiled as Section 81-433.1, R. C. M. 1947; repealing all acts and parts of acts in conflict herewith; and providing an effective date. | 839 |
| 261 | 148 | | An act to amend Sections 75-4120, 75-4121, 75-4122, 75-4123, 75-4124, 75-4125, 75-4126, 75-4127, 75-4128, 75-4130, 75-4133, 75-4134 and 75-4138 of the Revised Codes of Montana of 1947; providing means whereby county high schools may be unified and made a part of the school system of the district in which they are located; repealing all acts and parts of acts in conflict herewith and providing an effective date. | 844 |
| 262 | | 66 | An act to authorize, in certain instances, the boards of county commissioners to levy an additional tax of not to exceed eleven and one-half (11.5) mills for the county poor funds, providing for an effective date and repealing all acts and parts of acts in conflict herewith. | 852 |
| 263 | | 137 | An act providing for the making of loans and investments by building and loan associations and savings and loan associations organized and operating under the laws of the state of Montana, and providing that such associations may make all real estate loans which may be made by federal savings and loan associations having domicile in the state of Montana. | 853 |
| 264 | | 282 | An act to be known as the uniform commercial code, revising the law relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial | |


HeinOnline -- 1963 vol. I xxxiii 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, and secured transactions, including certain sales of accounts, chattel paper, and contract rights; providing for public notice to third parties in certain circumstances; providing for filing fees in certain circumstances; regulating remedies, procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; amending Sections 3-226, 5-803, 5-1001, 5-1114, 8-709, 11-2404, 11-3714, 11-3721, 11-3910(b), 13-606, 16-2905, 16-2922, 16-2923, 19-103, 25-231, 32-1905(2), 45-109, 45-112, 45-116, 45-301, 45-308, 45-704, 45-707, 45-809, 45-911, 45-1106, 45-1107, 45-1410, 47-124, 52-114, 52-116, 52-212, 52-312, 52-313, 52-314, 52-319 through 52-323, 53-110, 66-202, 67-1301, 72-211, 72-224, 74-608, 79-1905, 88-152, 88-154, 89-109(2), 93-2802, 93-3403, 93-4301, 93-4302, 93-4307(4), 93-4338, 93-4344, 93-4346, 93-5811, 93-6001, 93-6004, 93-8613, 93-401-22, and 93-1401-7 of the Revised Codes of Montana, 1947; repealing Sections 5-1007, 5-1008, 5-1016, 5-1017, 5-1043, 5-1047 through 5-1049, 8-501 through 8-507, 8-816 through 8-818, 14-523, 15-603, 15-605, 15-628 through 15-651, 16-2921, 17-308 through 17-314, 17-601, 17-602, 18-201 through 18-205, 30-601 through 30-609, 45-106, 45-1104, 45-1301 through 45-1305, 52-301 through 52-311, 52-315 through 52-317, 55-101 through 55-1801, 56-107, 65-104, 65-107, 65-115 through 65-126, 65-201 through 65-219, 67-1702 through 67-1704, 72-303, 72-305 through 72-307, 74-201, 74-202, 74-204 through 74-207, 74-321, 74-401 through 74-403, 74-502, 86-705, 86-706, 88-101 through 88-149, 88-156 through 88-160, and 93-4339 of the Revised Codes of Montana, 1947, and all other legislation inconsistent herewith; and providing an effective date. | 854 |
| 265 | | Sub. 158 | An act providing for the allowance of an increase in average number belonging for budget purposes where a school district or county high school anticipates an unusual increase in enrollment in the ensuing year; and providing the procedure for determining the average number belonging. | 1121 |
| 266 | 3 | | An act relating to the management and control of the state soldiers home, state hospital, state prison, state tuberculosis sanitarium, home for senile men and women, state industrial school, state training school and hospital, Montana children's center, and state vocational school for girls; abolishing the board of commissioners for the insane and the various executive boards, boards of trustees, and boards of managers of such institutions; vesting control and management of such institutions in a state department of public institutions; generally revising chapters of the code relating to such institutions; amending Sections 80-302, 80-308, 80-310, 80-311, 80-313, 80-316, 38-102, 38-104, 38-107, 38-108, 38-109, 38-110, 38-119, 38-207, 38-502, 38-504, 38-505, 38-1002, 80-702, 80-703, 80-704, 80-705, 80-707, 80-707.1, enacted as Section 1, Chapter 242, Laws of 1959, 80-707.5, enacted as Section 5, Chapter 242, Laws of 1959, 80-711, 80-719, 80-720, 80-731, 80-732, 80-738, 80-740, 80-743, 80-745, 80-206, 80-207, 80-209, 80-210.1, 80-211, 80-212, 80-213, 38-802, 38-804, 38-805, 38-1101, 38-1108, 80-806, 80-809, 80-818, 80-819, 80-820, 80-902, 80-911, 80-922, 80-923, 80-924, 10-101, 10-105, 10-110, 10-112, 10-113, 10-114, 10-118, 10-120, 10-121, 75-301, 75-302, 75-303, 80-1101, R. C. M. 1947; and repealing Sections 80-301, 80-304, 80-305, 80-306, 80-307, 80-309, 80-312, 80-314, 80-315, 80-317, 80-318, 80-319, 80-321, 80-322, 38-103, 38-105, 38-106, 38-111, 38-702, 38-901, 38-902, 80-706, 80-716, 80-717, 80-718, 80-735, 80-736, 80-737, 80-744, 80-747, 80-749, 80-202, 80-203, 80-204, 80-205, 80-208, 80-214, 80-216, 80-217, 38-801, 38-803, 38-817, 38-818, 80-801, 80-802, 80-803, 80-804, 80-805, 80-805.1, 80-808, 80-810, 80-812, 80-813, 80-814, 80-825, 80-826, 80-827, 80-901, 80-904, 80-906, 80-907, 80-908, 80-909, 80-910, 80-912, 80-913, 80-914, 80-916, 80-917, 80-930, 10-103, 10-104, 10-106, 10-107, 10-108, 10-109, 10-115, 10-116, 10-117, 75-312, R. C. M. 1947. | 1123 |
| 267 | 20 | | An act making certain changes in the general administration of providing for the equalization of financial distribution for all elementary and secondary schools in order to maintain a uniform system of free public schools by amending Sections 75-1713.1, 75-1723, 75-1816, 75-3611, 75-3612, 75-3616, 75-3617, 75-3618, 75-3619, 75-3706, 75-3722, 75-3801, 75-4230, 75-4516.1 and 75-4518.1, R. C. M. 1947, | |


HeinOnline -- 1963 vol. I xxxiv 1963

| Chap. | Senate Bill | House Bill | Title | Page |
|---|---|---|---|---|
| | | | relating to changes in budget by budget board when in excess of foundation program—restrictions on budgets, fixing tax levy, determination of levy in joint school districts, definitions—schedules of financial program, foundation program, distribution of funds—reports may be required, application for approval as isolated schools, distribution of money available to school districts—formula for apportionment of county funds, formula for distribution of state funds, common school levy, duties of county treasurer, district school taxes—election, attendance outside of county of pupil's residence, levy of taxes, reduction in budget by budget board—allowance of additional expenses over foundation program; and by repealing Sections 75-4507, 75-4508, 75-4509 and 75-4510, R. C. M. 1947, relating to state superintendent to give notice if state fund inadequate, resolution to issue warrants—hearing, authorization to issue warrants, method of payment of warrants, increase of budgets for high schools—when authorized, special tax levy—rate, application of act and construction of act. | 1155 |
| 268 | 146 | | An act to amend Section 4-104, R. C. M. 1947, pertaining to the creation, qualifications and term of the Montana liquor control board; providing for a five (5) member board; providing for removal of members by the governor; and providing an effective date. | 1176 |
| 269 | | 167 | An act to amend Sections 87-103, 87-106, and 87-109, R. C. M. 1947, which sections are a part of the unemployment compensation law; by providing that a claimant with high quarter wages of $1282.50 must have wages of $100 in a quarter other than his high quarter; increasing from one to two weeks the minimum disqualification for benefits; providing that average annual employer tax rates shall increase to 2.0 per centum or to 2.7 per centum if trust fund balance remains below $18,000,000 continuously for one year or for two years, respectively; and providing an effective date. | 1178 |
| 270 | | 227 | An act providing for payment of an honorarium for veterans of World War I from the proceeds of bonds to be retired with income from the cigarette tax; amending Sections 3 and 17-A of Initiative No. 54 and Sections 84-5606 and 84-5621, R. C. M. 1947; and repealing Sections 1, 2 and 12 of Initiative No. 54. | 1191 |
| 271 | 10 | | 'The Department of Administration Act' creating a department of administration with duties and powers in the areas of accounting, purchasing, planning and construction of state buildings, records management, maintenance and custody of capitol buildings, and general services; abolishing the state records committee, the state laboratory commission, the veterans' memorial fund commission, the state furnishing board, and the office of capitol custodian; amending Sections 26-103, 75-310, 77-417, 77-419, 78-202, 78-302, 82-109.2, 82-308 and 82-3205, R. C. M. 1947; repealing Sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947. | 1198 |


## APPROPRIATIONS


| House Bill | Title | Page |
|---|---|---|
| 1 | An act to appropriate money for the legislative assembly and for incidental expenses of the Thirty-eighth Legislative Assembly of the State of Montana. | 1213 |
| 59 | An act to appropriate money for the operation of the legislative council for the biennium beginning July 1, 1963. | 1214 |
| 85 | An act to appropriate money for the payment of cigarette tax refunds, corporation license tax refunds, inheritance tax refunds, and unclaimed dividends of a closed banking corporation. | 1214 |
| 109 | An act to appropriate twenty-five thousand dollars ($25,000) to the state highway commission for state parks operations and expenses for the period be- | |


HeinOnline -- 1963 vol. I xxxv 1963

| House Bill | Title | Page |
|---|---|---|
| | ginning on the effective date of this act and ending June 30, 1963; providing an effective date. | 1216 |
| 147 | An act to appropriate money for the purchase of replacement volume 6 of the Revised Codes of Montana of 1947; and providing an effective date. | 1216 |
| 148 | An act to appropriate money for the purchase of replacement volume 7 of the Revised Codes of Montana of 1947; and providing an effective date. | 1217 |
| 149 | An act to appropriate money for the purchase of cumulative pocket supplements of 1963, for the Revised Codes of Montana, 1947; and providing for an effective date. | 1217 |
| 400 | An act appropriating moneys for certain agencies and institutions of state government for the biennium ending June 30, 1963. | 1218 |
| 402 | An act appropriating moneys to the state forester for the fiscal year ending June 30, 1963. | 1219 |
| Sen. Sub. for H.B. 414 | An act to appropriate money to the attorney general, state auditor, governor, railroad and public service commission, secretary of state, supreme court, state treasurer, and superintendent of public instruction for operation and capital for the biennium ending June 30, 1965. | 1219 |
| 418 | An act to appropriate money to certain licensing and examining boards for the biennium ending June 30, 1965. | 1226 |
| 419 | An act to appropriate money to certain state agencies for operation, capital, grants and benefits for the biennium ending June 30, 1965. | 1231 |
| 421 | An act to appropriate money to Montana state university, Montana school of mines, Montana state college, the agricultural experiment station, the cooperative agricultural extension service, northern Montana college, western Montana college of education, eastern Montana college of education, western interstate commission for higher education, office of executive secretary of university of Montana and the board of education for operation and capital for the biennium ending June 30, 1965. | 1242 |
| 422 | An act appropriating money for the purchase of cumulative pocket supplements and replacement volume 6 of the Revised Codes of Montana, 1947. | 1248 |
| 423 | An act to appropriate money to the board of examiners for payment of claims relating to the cost of prisoner extradition, prisoner transportation, state insurance premiums and the commission for uniform state laws. | 1249 |
| 424 | An act appropriating money for the operation of the Thirty-eighth Legislative Assembly. | 1250 |
| 425 | An act to appropriate money to public schools for the biennium ending June 30, 1965. | 1250 |
| 427 | An act to appropriate money to the state board of examiners for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building of the state of Montana at Helena, Montana; and providing an effective date. | 1251 |
| 428 | An act to appropriate money to certain state agencies for operation, capital and grants and benefits for the biennium ending June 30, 1965. | 1252 |
| 429 | An act to appropriate money to the state highway commission, the state advertising agency, state parks, and fish and game commission for operation and capital for the biennium ending June 30, 1965. | 1259 |
| 430 | An act to appropriate money to certain state institutions for operation and capital for the biennium ending June 30, 1965. | 1263 |
| 431 | An act to appropriate money to certain state agencies for operation, capital, grants and benefits for the biennium ending June 30, 1965. | 1270 |
| 432 | An act appropriating to the federal and private revenue fund, capitol building account, all moneys paid into the general fund by state agencies as rent or charges for occupying office space in state buildings. | 1275 |
| 433 | An act to appropriate money to the department of public institutions for operation and capital for the biennium ending June 30, 1965. | 1276 |


## MEMORIALS AND RESOLUTIONS


| No. | Title | Page |
|---|---|---|
| House Joint Memorial No. 1 | A Joint Memorial of the Senate and House of Representatives of the state of Montana to the President of the United States and the | |


HeinOnline -- 1963 vol. I xxxvi 1963

| No. | Title | Page |
|---|---|---|
| | Monana congressional delegation requesting action to place the United States lumber industry on an equitable basis with foreign competitors and require the marking of imported lumber to show the country of origin. | 1276 |
| House Joint Memorial No. 2 | A Joint Memorial of the Senate and House of Representatives of the state of Montana to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States; to the Honorable Mike Mansfield and Honorable Lee Metcalf, senators from the state of Montana; to the Honorable James Battin and the Honorable Arnold H. Olsen, representatives from the state of Montana; to the secretary of the interior and to the United States bureau of reclamation, urging the passage of legislation to amend the reclamation act and any other laws or rules, to waive the application of the land limitation clause in the state of Montana. | 1278 |
| House Joint Memorial No. 5 | A Joint Memorial of the Senate and House of Representatives of the state of Montana, to the Montana congressional delegation, opposing the breaking up of the military post at Fort Missoula, Montana. | 1279 |
| Sen. Sub. for House Joint Memorial No. 6 | A Joint Memorial of the Senate and House of Representatives of the state of Montana to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States; to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from the state of Montana; to the Honorable James Battin and the Honorable Arnold H. Olsen, represenatives from the state of Montana; to the secretary of agriculture and to the United States forest service; to the secretary of the interior and to the bureau of land management, urging the passage of legislation so that counties will henceforth receive a percentage of the actual gross income instead of a percentage of net income of the moneys received from lands administered by the forest service and bureau of land management. | 1281 |
| House Joint Memorial No. 10 | A Joint Memorial of the House of Representatives and Senate of the state of Montana to the President of the United States; to the Honorable Robert McNamara, secretary of defense of the United States and to the Honorable Fred Korth, secretary of the navy of the United States requesting that the silver service which now is on the U. S. S. Helena, which silver service was originally given by the people of the state of Montana to the United States navy for the United States heavy cruiser Montana and thereafer to the U. S. S. Helena, be returned to Montana and placed in the historical museum until such time as the navy has a new ship representing Montana on which such silver service may be used. | 1282 |
| House Joint Memorial No. 11 | A Joint Memorial of the Senate and House of Representatives of the state of Montana requesting that the voluntary participation provisions be retained in future agricultural production control measures on the production of corn for silage, or the production of barley and oats in Montana. | 1284 |
| House Joint Memorial No. 12 | A Joint Memorial of the House of Representatives and the Senate of the state of Montana to the Honorable Congress of the United States, to the President of the United States; to the Honorable Douglas Dillon, secretary of the treasury of the United States; to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from the state of Montana; to the Honorable James F. Battin and the Honorable Arnold H. Olsen, representatives from the state of Montana, requesting legislation authorizing the department of the treasury of the United States to design and mint and distribute through the state treasurer of the state of Montana five hundred thousand (500,000) silver dollars in commemoration of the Montana territorial centennial and thanksgiving centennial. | 1286 |
| House Joint Memorial No. 15 | A Joint Memorial to the Congress and executive branch of the Federal Government requesting that a public hearing be held in the county seat of each county affected before any final decision is made to establish dams, wildlife preserves, migratory bird refuges or parks. | 1287 |
| House Joint Resolution No. 1 | A Joint Resolution of Senate and the House of Representatives of the state of Montana, ratifying the proposed amendment to the Constitution of the United States relating to the qualifications of electors. | 1297 |
| House Joint Resolution No. 6 | A Joint Resolution of the Senate and House of Representatives recognizing the contribution of the late Governor Donald G. Nutter to the state of Montana, and designating the trophy hall in the veterans and pioneers memorial building in Helena to be hereinafter known as the Donald G. Nutter Memorial Trophy Hall. | 1298 |


HeinOnline -- 1963 vol. I xxxvii 1963

| No. | Title | Page |
|---|---|---|
| House Joint Resolution No. 7 | A Joint Resolution of the Senate and House of Representatives requesting a thorough review of policy and procedures as affecting game management in the national parks with special emphasis on the present problem of the Yellowstone national park elk herd. | 1300 |
| House Joint Resolution No. 9 | A Joint Resolution of the Senate and House of Representatives requesting the legislative council to conduct a comprehensive study of the statutes and practices of requiring fidelity bonds for public officials in Montana and report the findings of that study together with recommendations for improvements to the Thirty-ninth Legislative Assembly. | 1301 |
| House Joint Resolution No. 12 | A Joint Resolution of the Senate and House of Representatives directing the state board of education, ex officio regents of the University of Montana, to conduct a study of the feasibility and desirability of changing the names of the various units of the University of Montana. | 1302 |
| House Joint Resolution No. 13 | A Joint Resolution of the Senate and House of Representatives petitioning the Congress of the United States to call a convention for the purpose of amending the constitution to provide for the election of the president and vice president in a manner fair and just to the people of the United States unless Congress shall have sooner submitted such an amendment. | 1303 |
| House Joint Resolution No. 14 | A Joint Resolution of the Senate and House of Representatives commending the excellent job of refurbishing the furniture of the Senate and House done at Montana state prison. | 1305 |
| House Joint Resolution No. 16 | A Joint Resolution of the Senate and House of Representatives requesting that the legislative council study the property classification laws of Montana, compare these laws with those of other states, and report its findings and recommendations, together with any necessary legislation, to the Thirty-ninth Legislative Assembly. | 1305 |
| House Joint Resolution No. 17 | A Joint Resolution of the Senate and House of Representatives requesting that the legislative council conduct a study of the feasibility of administrative consolidating the retirement systems of all public employees in Montana. | 1306 |
| House Joint Resolution No. 18 | A Joint Resolution of the Senate and House of Representatives expressing the gratitude of all citizens to all the persons who have given so generously of their time and material means to aid and assist Rick Hutton and his parents. | 1308 |
| House Joint Resolution No. 21 | A Joint Resolution of the Senate and House of Representatives directing the state board of equalization to report to the Thirty-ninth Legislative Assembly the status of the reclassification and reappraisal program, the status of property tax equalization, and its recommendations for any further legislation, and requesting the assistance of the legislative council in the preparation of such legislation. | 1309 |
| House Joint Resolution No. 22 | A Joint Resolution of the Senate and House of Representatives for the appointment of an interim air pollution investigating committee to study the nature, character and extent of air pollution in the state of Montana and in the various communities in the state of Montana and to report to the Thirty-ninth Legislative Assembly. | 1310 |
| Senate Joint Memorial No. 1 | A Joint Memorial of the House of Representatives and the Senate of the state of Montana to the interstate commerce commission: urging that the economic interests of the state of Montana be protected by interstate commerce commission action preserving the present competitive rail freight rate structure applying to westbound shipments of grain from the state of Montana and urging administrative and congressional action to insure freedom from arbitrary efforts by barge carriers and other unregulated carriers to foce upon Montana shippers artificial and unjust levels of freight rates. | 1288 |
| Senate Joint Memorial No. 3 | A Joint Memorial of the Senate and House of Representatives of the state of Montana to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States; to the Honorable Mike Mansfield and Honorable Lee Metcalf, senators from the state of Montana; to the Honorable James Battin and the Honorable Arnold H. Olsen, representatives from the state of Montana; to the secretary of the interior and to the United States bureau of reclamation, urging the passage of legislation to amend the reclamation act and any other laws or rules, to waive the application of the land limitation clause in the area above Canyon Ferry dam in the state of Montana. | 1290 |
| Senate Joint Memorial No. 5 | A Joint Memorial of the Senate and House of Representatives of the state of Montana, to the Montana congressional delegation, | |


HeinOnline -- 1963 vol. I xxxviii 1963

| No. | Title | Page |
|---|---|---|
| | and the bureau of public roads, department of commerce of the United States of America requesting that the United States of America through the bureau of public roads, department of commerce participate in the cost as authorized by the laws of the United States, in the replacement of adequate pipes underneath any state federal aided highway or interstate highway used for irrigation, and the replacement of other irrigation facilities destroyed or disturbed by the construction of said highways. | 1292 |
| Senate Joint Memorial No. 6 | A Joint Memorial of the Senate and House of Representatives of the state of Montana, to the Montana congressional delegation, to the United States secretary of commerce and to the federal bureau of public roads administrator, urging that necessary steps be taken to introduce legislation to amend a federal law relating to highways, to permit a state to build additional primary system mileage when seventy-five (75) per cent of a state's primary system is completed and maintained, instead of ninety (90) per cent as presently required. | 1294 |
| Senate Joint Memorial No. 7 | A Joint Memorial of the Senate and House of Representatives of the state of Montana, to the Montana congressional delegation and to the honorable secretary of the interior of the United States, urging that action be taken by the United States to implement the provisions of Chapter 104, Montana Session Laws of 1959, to enable the beneficiaries of that legislation to obtain the benefits intended thereby. | 1295 |
| Senate Joint Memorial No. 9 | A Joint Memorial of the Senate and House of Representatives requesting that the federal portion of cost on federal aid primary highways and secondary highways be increased from about fifty-seven percent to seventy percent. | 1296 |
| Senate Joint Resolution No. 1 | A Joint Resolution of the Senate and House of Representatives requesting the state laboratory commission to designate the building now known as the state laboratory building as the W. F. Cogswell building in honor of that Montana medical pioneer. | 1311 |
| Senate Joint Resolution No. 2 | A Joint Resolution of the Senate and House of Representatives complimenting the governor's domestic relations committee for their excellent work and expressing the gratitude of the Montana legislative assembly to the members of that committee. | 1312 |
| Senate Joint Resolution No. 6 | A Joint Resolution of the Senate and House of Representatives of the state of Montana inviting the Boy Scouts of America to hold and conduct its national Boy Scout Jamboree in 1968 on the eastern border of Glacier National park near East Glacier, Montana. | 1313 |
| Senate Joint Resolution No. 8 | A Joint Resolution of the Senate and House of Representatives directing the legislative council to conduct a study of state investments and depository practices. | 1316 |
| Senate Joint Resolution No. 10 | A Joint Resolution of the Senate and House of Representatives supporting continued operation of the Montana soldiers' home at Columbia Falls, and requesting studies and recommendations for a long-range plan for future needs. | 1317 |
| Senate Joint Resolution No. 11 | A Joint Resolution of the Senate and House of Representatives directing the legislative council to study and report the best methods to be followed to achieve cooperative action by state, and local agencies or other entities of government in the full development and utilization of our water and other resources and related lands. | 1319 |
| Senate Joint Resolution No. 12 | A Joint Resolution of the Senate and House of Representatives directing the state water conservation board to transfer administrative control of Dead Man's basin and the Painted Rocks reservoir to the highway commission for development of state parks or recreation areas. | 1320 |
| Senate Joint Resolution No. 13 | A Joint Resolution of the Senate and House of Representatives directing the state board of land commissioners to study the problem of concentrations of state land in various counties and recommend a corrective plan to the 39th legislative assembly. | 1321 |
| Senate Joint Resolution No. 15 | A Joint Resolution of the Senate and House of Representatives petitioning Congress to call a convention for the purpose of proposing an amendment to the constitution of the United States. | 1322 |
| Senate Joint Resolution No. 16 | A Joint Resolution of the Senate and House of Representatives requesting the legislative council to study the rules of the House and Senate. | 1323 |


HeinOnline -- 1963 vol. I xxxix 1963

# SESSION LAWS

## CHAPTER 1

An Act to Fix the Compensation of Officers and Employees of the Thirty-eighth Legislative Assembly of the State of Montana.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. WHEREAS existing wage scales in effect at this time present an emergency requiring that the compensation of officers and employees of the thirty-eighth legislative assembly shall be paid a higher rate than that heretofore required, or which in all probability will be hereafter required, and notwithstanding the general law fixing the compensation of officers and employees of the legislative assemblies, and expressly without amending any such law or laws except to the extent that they shall not apply to the compensation of officers and employees of thirty-eighth legislative assembly;

Compensation shall be paid to the officers and employees of the thirty-eighth legislative assembly as follows:

Compensation set for officers and employees of 38th Legislative Assembly.

The Secretary of the Senate, the Chief Clerk of the House of Representatives, the Sergeant-at-Arms of each house eighteen dollars ($18) per day. The Senate Law Clerks and House of Representatives Law Clerks eighteen dollars ($18) per day;

$18.00 per day.

The assistant secretary of the Senate, the assistant chief clerk of the House of Representatives; the journal clerk, the bills clerk, the enrolling clerk, engrossing clerk, the bill clerk, the chief printing clerk of each house; the assistant sergeant-at-arms of the Senate, the assistant sergeant-at-arms of the House of Representatives (in case such assistants are employed), the payroll clerk of the House of Representatives, the clerk of the judiciary committee, the clerk to the finance and claims committee of the Senate, the secretary of the judiciary committee of both houses, the secretary to the appropriations committee of the House, the Clerk to the Chief Clerk of the House, the stenographer to the secretary of the Senate,

$15.00 per day.



HeinOnline -- 1963 vol. I 1 1963

the Chief stenographer of both houses, the secretary to the Speaker of the House of Representatives, the secretary to the President of the Senate, the secretaries to the majority and minority floor leaders of both houses, the secretary to the sergeant-at-arms of each house, and the mimeograph clerk, fifteen dollars ($15) per day each.

$12.00 per day. The assistant journal clerk, the assistant bill clerk, the assistant enrolling clerk, the assistant engrossing clerk, the assistant printing clerk, the reading clerk, two chief proof readers of both houses, the supply clerk of the House of Representatives, stenographers, the mailing clerk and filing clerk of each house, and the assistant mimeograph clerk of each house, chief door keeper and chief janitor, twelve dollars ($12) per day each.

$11.00 per day. Other committee clerks, typists, other proof readers, and telephone operators, elevator operators of each house, eleven dollars ($11) per day each.

$10.00 per day. The chaplain, doorkeepers, janitors, assistant janitors, and watchman of each house, ten dollars ($10) per day each.

$7.00 per day. Pages, seven dollars ($7) per day each.

$10.00 per day. And all other employees of the legislative assembly not herein specifically enumerated, ten dollars ($10) per day each.

Pay for days of service only. Each salary herein specified shall be paid for each and every day of the entire legislative session, commencing with the date of employment of the officer or employee, save and except that any officer or employee whose services are dispensed with for any portion of the session shall receive pay only for the number of days during which services are performed by such officer or employee.

38th Assembly only. Section 2. The salaries herein specified to be paid to officers and employees shall be effective for and shall be paid only to such officers and employees of the thirty-eighth legislative assembly of the State of Montana and shall not be effective for nor payable to the officers and employees of any subsequent legislative assembly.

Effective immediately. Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved January 14, 1963.



HeinOnline -- 1963 vol. I 2 1963

## CHAPTER 2

An Act to Amend Section 61-211, R. C. M. 1947, Relating to Adoption Proceedings.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 61-211, R. C. M. 1947, be, and the same is hereby amended to read as follows: Amending clause.

"61-211. **Interlocutory and final decree.** Upon examination of the report described in section 61-209, if such report has been deemed necessary by said court, and after hearing, the court may issue an interlocutory *decree* giving the care and custody to the petitioners pending the further order of the court. Interlocutory decree.

When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner: Service of process.

The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why said petition should not be granted. Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by *Rule 4, M. R. Civ. P.* If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from a judgment in civil actions. Citation. Order binding. Appeal.

The petitioners and the child shall appear at said hearing, unless the presence of the child is waived by the court. Appearance.

Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adop- When service of process not required.



HeinOnline -- 1963 vol. I 3 1963

tion; or on the father of an illegitimate child; or on any parent whose consent to adoption is not required under the provisions of section 61-205; and service of process shall not be made on any parent who has relinquished his child to the state department of public welfare or an adoption agency licensed by the state department of public welfare.

Investigator shall observe.

After an interlocutory decree, as aforesaid, has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption.

Application for final decree.

After six (6) months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a

Hearing and notice.

time and place for final hearing. Notice of the time and date of the hearing shall be served on the state department of public welfare, and the investigator, if

Investigator shall file report.

any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may

Court may enter final decree of adoption

enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of said child.

Approved January 23, 1963.

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## CHAPTER 3

An Act to Amend the Appendix of Forms Contained in Chapter 13, Laws of 1961, Being the M.R.CIV.P. by Adding a New Form to be Numbered Form 23 Prescribing the Form of a Supersedeas Bond.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That the Appendix of Forms contained in Chapter 13, Laws of 1961, being the M.R.Civ.P., be, and



HeinOnline -- 1963 vol. I 4 1963

the same is hereby amended by adding a new form to be numbered Form 23, reading as follows: Form 23.

*Form 23. Supersedeas Bond.*

*We the undersigned jointly and severally acknowledge that we and our personal representatives are jointly bound to pay to (respondent) the sum of $.....* Form of supersedeas bond.

*(Appellant) has appealed from that certain judgment (or order) (insert descriptive facts) and has obtained an order staying execution from the district court, and the condition of this bond is that if the judgment (or order) appealed from, or any part thereof, be affirmed, or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment (or order) or the part of such amount as to which the judgment (or order) is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal. If such payment be made then this bond is void, otherwise to be and remain in full force and effect. If the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent in his favor against the sureties for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal.*

| | |
|---|---|
| ..... | ..... |
| *Appellant* | *Address* |
| ..... | ..... |
| *Surety* | *Address* |
| ..... | ..... |
| *Surety* | *Address* |

*(Justification of Sureties)*
*Form of bond approved.*

.....
*Judge*

*(This form with necessary alterations may be used in any situation covered by Rule 62.)* Use under rule 62.

Approved January 23, 1963.



HeinOnline -- 1963 vol. I 5 1963

## CHAPTER 4

An Act to Amend Section 93-8505, Revised Codes of Montana, 1947, Relating to Appearances in Actions by Defendants.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 93-8505, R. C. M., 1947, be, and the same is hereby amended to read as follows:

Appearance by defendant.

"Section 93-8505. (9782) **Appearance—Notices after appearance.** A defendant appears in an action when he answers, *files a motion,* or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him, or has such appearance entered in open court. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given."

Right to notice of subsequent proceedings.

Approved January 23, 1963.

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## CHAPTER 5

An Act to Repeal Section 93-3004, R. C. M., 1947, Relating to the Manner and Time of Issuing an Alias Summons.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Repealing clause.

Section 1. That section 93-3004, R. C. M. 1947, be, and the same is hereby repealed.

Approved January 23, 1963.

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## CHAPTER 6

An Act to Repeal Section 93-3001, R. C. M. 1947, Relating to Commencement of Civil Actions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Repealing clause.

Section 1. That section 93-3001, R. C. M. 1947, be, and the same is hereby repealed.

Approved January 23, 1963.



HeinOnline -- 1963 vol. I 6 1963

## CHAPTER 7

An Act to Repeal Section 93-2719, R. C. M. 1947, Relating to How Objection That Action Not Commenced in Time May Be Taken.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Repealing clause.

Section 1. That section 93-2719, R. C. M. 1947, be, and the same is hereby repealed.

Approved January 23, 1963.

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## CHAPTER 8

An Act to Amend Section 91-901, R. C. M. 1947, Relating to the Filing of Contests on Probate of Wills.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 91-901, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Contestant of will must file grounds of opposition.

"91-901. (10032) **Contestant to file grounds of contest, and petitioner to reply.** If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may *direct a motion thereto upon any of the grounds provided for in Rule 12, M.R.Civ.P. If the motion* is sustained, the court or judge must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the *motion* is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised involving:

Motion under rule 12.

Time for amendment.

Answer.

1. The competency of the decedent to make a last will and testament;

2. The freedom of the decedent at the time of the execution of the will from duress, menace, fraud, or undue influence;

3. The due execution and attestation of the will by the decedent or subscribing witnesses; or,



HeinOnline -- 1963 vol. I 7 1963

Request for jury trial.

Court trial.

Designated plaintiff and defendant.

4. Any other questions substantially affecting the validity of the will; must, on request of either party in writing, filed three days prior to the day set for the hearing, be tried by a jury. If no jury is demanded, the court or judge must try and determine the issues joined. On the trial, the contestant is plaintiff and the petitioner is defendant."

Approved January 23, 1963.

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## CHAPTER 9

An Act to Amend Section 11-1914, Revised Codes of Montana, 1947, Relating to the Duties of the Board of Trustees of the Fire Department Relief Association; Providing Such Board With the Power and Authority to Invest in Time or Savings Deposits in Addition to Bonds and Securities.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 11-1914, R. C. M., 1947, is amended to read as follows:

Duties of trustees—surplus funds.

"11-1914. **Duties of trustees**—*investment of surplus funds.* The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, *in any time or savings deposits,* in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in boldface type, substantially as follows: 'Property of the ..... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association'."

Investment time or saving deposits, U. S. Bonds, warrants.

Investment must be stamped.

Negotiable on order of board.

Approved January 26, 1963.



HeinOnline -- 1963 vol. I 8 1963

## CHAPTER 10

An Act to Amend Section 11-1310, Revised Codes of Montana, 1947, Relating to the Investment of City or Town Moneys From Funds for Which There is No Immediate Demand; Providing That Moneys Realized From the Sale of Bonds, for Which There is No Immediate Demand, May be Invested by a City or Town in Approved Securities; Repealing All Acts or Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 11-1310, R. C. M., 1947, is amended to read as follows: Amending clause.

"11-1310. **Investment of city or town moneys in city or town warrants** *and approved securities. (1) Except as provided in subsection (2) of this section,* whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient money to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk."

City or town council authorized to invest funds.

Clerk to give notice.

Treasurer shall purchase warrants.

Treasurer shall notify clerk.

*(2) Whenever the city or town has under its control*



HeinOnline -- 1963 vol. I 9 1963

Other approved investments—maturity one year or less.

*any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments shall be credited to the bond sinking fund of the city or town.*

Interest earned—Bondsinking fund.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved January 26, 1963.

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## CHAPTER 11

An Act to Amend Section 16-2001, Revised Codes of Montana, 1947, Relating to the Investment of Sinking Funds of Counties, Cities and Towns; Providing Counties, Cities and Towns With the Power and Authority to Invest in Time or Savings Deposits in Addition to Bonds and Securities.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 16-2001, R. C. M., 1947, is amended to read as follows:

County Commissioners authorized to invest bond sinking funds.

"16-2001. **Investments of sinking funds of counties, cities and towns—protection and keeping of** *bonds,* **securities,** *and any time or savings deposits.* That the board of county commissioners of any county of the state of Montana, and the council or commission of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking funds of any such county, city or town, as is not needed for the payment of bonds or interest coupons, in United States Government bonds or securities, state bonds or securities, *any time or savings deposits,* county, city or school district bonds or county or city warrants or other bonds or securities which are supported by general taxation, except irrigation district bonds, and special im-



HeinOnline -- 1963 vol. I 10 1963

provement district or maintenance district bonds or warrants; provided, however, that all such investments must first be approved by the state examiner, and that all such bonds, securities, *or any time or savings deposits* must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, shall become due and payable; and provided further, that whenever any of the bonds, for which such sinking fund was established, are not yet due but are then redeemable under optional provisions thereof, such sinking funds shall not be subject to investment but shall be used and applied in payment and redemption of such bonds. The bonds, securities, *and any time or savings deposits* in which any such sinking funds are invested shall be kept in the custody of the county, city or town treasurer and held by him for the benefit of the county, city or town, as the case may be. It shall be the duty of such treasurer to properly protect such bonds, securities, *and any time or savings deposits* by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the sinking fund for which the investment was made."

Approval of state examiner.

60 day limitation.

Redemption.

Custody of investments in treasurer.

Duty of treasurer.

Interest earned—sinking fund.

Approved January 26, 1963.

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## CHAPTER 12

An Act to Amend Section 16-2044, Revised Codes of Montana, 1947, Relating to the Investment of County Bond Sinking and Interest Funds; Providing That Such Funds May be Invested in Time or Savings Deposits.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 16-2044, R. C. M., 1947, is amended to read as follows:

Amending clause.

"16-2044. **Investment of sinking and interest fund.** Whenever there is available money in any sinking and

Investment of county sinking and interest fund.



HeinOnline -- 1963 vol. I 11 1963

interest fund, over and above the amount required for payment of principle and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commisioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

County treasurer shall purchase bonds.

5% limitation.

When any bonds have been heretofore or are hereafter purchased with any sinking and interest fund moneys under the provisions of this section such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him, and such county treasurer shall at once endorse across the face of each such bond the word 'Paid' and the date thereof and shall sign such endorsement, and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word 'Cancelled' and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and cancelled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the cancelled coupons attached, to the county clerk with a report showing the numbers thereof and amount paid on the purchase thereof, and the county clerk shall exhibit such bonds, with attached coupons and report, to the board of county commissioners at their next regular session.

Treasurer shall endorse bonds.

Treasurer shall cancel interest coupons.

Record of registration.

Delivery to clerk.

Exhibit to board.

If the board cannot purchase any of the outstanding bonds at such reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board

Other approved investments.



HeinOnline -- 1963 vol. I 12 1963

of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, in bonds or treasury certificates of the United States, *or in any time or savings deposits;* provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least sixty (60) days before the date when the bonds of the county of such series or issue will become redeemable.''

60 day limitation.

Approved January 26, 1963.

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## CHAPTER 13

An Act to Amend Section 16-2050, Revised Codes of Montana, 1947, Relating to School District or County High School Funds Realized From Bond Sales for Purposes of Construction; Requiring the Officer in Charge of Such Funds to Invest Idle Funds, When Requested by the School District or County High School Governing Body, in Time or Savings Deposits or in Short-Term Obligations of the United States of America, and to Credit Interest Earned to the Sinking Fund of Such School District or County High School, Notwithstanding Other Provisions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 16-2050, R. C. M., 1947, is amended to read as follows:

Amending clause.

''16-2050. **Investment of county moneys in county warrants and investment of school district or county high school moneys.** (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the

Investment of county and school moneys.

Purchase of county warrants.



HeinOnline -- 1963 vol. I 13 1963

amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in *any time or savings deposits,* United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

Clerk to give notice.

Treasurer shall purchase warrants.

Treasurer shall notify clerk.

Other approved investments—maturity one year or less.

Investment of school construction funds.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in *any time or savings deposits or in* short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments shall be credited to the *sinking fund of the* said school district or county high school, notwithstanding the povisions of subsection (6) of section 16-2618, Revised Codes of Montana, 1947.''

Interest earned—school sinking fund.

Approved January 28, 1963.

## CHAPTER 14

An Act to Correct a Mistaken and Inadvertent Purported Repeal of R. C. M. 1947, Section 93-2824, Known as



HeinOnline -- 1963 vol. I 14 1963

the 'General Survival Statute' Which Was Shown as Superseded by Rule 25, M. R. Civ. P., Adopted as Chapter 13, Laws of 1961, Effective January 1, 1962; Re-Enacting Said Section 93-2824, R. C. M. 1947; and Making the Same Retroactive to Accomplish the Purpose of Correcting the Mistake Contained in Chapter 13, Laws of 1961, Section 79, Rule 86, and Section 82, Table B, Section 83, Table C, and Section 84, and Amending Tables B and C of M. R. Civ. P. by Deleting Therefrom Reference to Section 93-2824, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

General survival statute re-enacted—made retroactive to January 1, 1962—mistake in repeal corrected.

Section 1. **Purpose.** Under the provisions of Chapter 255, Laws of 1959, the Supreme Court of the State of Montana was authorized and empowered to have prepared and submit proposed rules of pleading, practice and procedure in civil cases in the courts of this state to the next succeeding legislative session for their consideration; that under the provisions of such chapter, a Civil Rules Commission was appointed by the Supreme Court to make a study and thereafter to submit proposed rules to the court; that thereafter and in accordance with Chapter 255, Laws of 1959, and the order of the Supreme Court, proposed new rules covering pleading, practice and procedure were submitted to and approved by the Supreme Court and transmitted to the Legislature for its consideration. Such proposed rules were adopted by Chapter 13, Laws of 1961, to be effective January 1, 1962. Inadvertently listed in the tables of statutes superseded by the new rules was section 93-2824, R. C. M. 1947, which was shown as superseded by Rule 25, M. R. Civ. P. Section 93-2824, R. C. M. 1947, dealt with substantive law in that it provided for the survivorship of certain causes of action upon death of the party, whereas Rule 25, M. R. Civ. P. provides for substitution upon the death of a party to an action in which the claim is not thereby extinguished, being purely a procedural rule and in no way carried into the rules the provisions of substantive law set forth in section 93-2824, R. C. M. 1947, and it is necessary that such mistake be corrected retroactive to the date of such inadvertant purported repeal.

Survival statute.

Section 2. "93-2824. (9086) **Action—when not to abate by death, marriage or other disability—proceedings in such case.** An action, or cause of action, or defense,



HeinOnline -- 1963 vol. I 15 1963

shall not abate by death, or other disability of a party, or by the transfer of any interest therein, but shall in all cases, where a cause of action or defense arose in favor of such party prior to his death or other disability, or transfer of interest therein, survive, and be maintained by his representatives or successors in interest; and in case such action has not been begun or defense interposed, the action may be begun or defense set up in the name of his representatives or successors in interest; and in case the action has been begun or defense set up, the court shall, on motion, allow the action or proceeding to be continued by or against his representatives or successors in interest. In case of any transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

Amending clause.

Section 3. Section 82, Chapter 13, Laws of 1961, being Table B of the M. R. Civ.P., is amended by deleting therefrom the reference that Rule 25 supersedes Section 93-2824, R. C.M. 1947.

Amending clause.

Section 4. Section 83, Chapter 13, Laws of 1961, being Table C of M. R. Civ. P., is amended by deleting therefrom the reference that Section 93-2824, R. C. M. 1947, was superseded by Rule 25.

Effective January 1, 1962.

Section 5. Effective date. This Act shall be retroactive and take effect as of January 1, 1962, upon its passage and approval.

Approved January 29, 1963.

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## CHAPTER 15

An Act to Amend Section 93-3702, R. C. M. 1947, Relating to the Verification of Pleadings.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 93-3702, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Verification of pleadings.

"Section 93-3702. (9163). **Verification of pleadings.** *In any case in which an affidavit of verification is re-*



HeinOnline -- 1963 vol. I 16 1963

*quired, except as otherwise specifically provided, such* affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated on information and belief, and that as to those he believes it to be true. Such verification must be made by the party, or, if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification must state that the deponent is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information and belief of such agent or attorney. When a corporation is a party, the verification may be made by any officer thereof, and must state what officer he is, and that the matters stated therein are true to the best knowledge, information, and belief of such officer. If there is no officer of the corporation within the county, the verification may be made by its attorney.''

By party.

By agent or attorney.

By officer of corporation.

Approved January 29, 1963.

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## CHAPTER 16

An Act Authorizing and Empowering the Supreme Court of the State of Montana to Regulate by Rules, the Pleading, Practice and Procedure in Civil Cases in the Courts of the State of Montana, for the Purpose of Simplifying Judicial Proceedings and Promoting the Speedy Determination of Litigation Upon its Merits.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The Supreme Court of this State shall have the power to regulate the pleading, practice, procedure, and the forms thereof in civil actions in all courts of this State, by rules promulgated by it from time to time, for the purpose of simplifying judicial proceedings in the Courts of Montana and for promoting the

Supreme court shall promulgate rules to regulate civil procedure.



HeinOnline -- 1963 vol. I 17 1963

speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant and shall not be inconsistent with the Constitution of the State of Montana.

Appointment of advisory committee.

Section 2. Before any rules are adopted the Supreme Court shall appoint an advisory committee consisting of eight members of the Bar of the State and at least three judges of the District Court to assist the Court in considering and preparing such rules as it may adopt.

Court shall submit proposed rule to bench and bar.

Section 3. Before any rule is adopted, the Supreme Court shall distribute copies of the proposed rule to the bench and bar of the State for their consideration and suggestions and give due consideration to such suggestions as they may submit to the Court. The Montana Bar Association or the Association of Montana Judges may file with the Supreme Court a petition specifying their suggestions concerning any existing or proposed rule and requesting a hearing thereon within six (6) months after the filing of the petition.

Petition specifying suggestions.

Courts may adopt rules of court.

Section 4. Any District Court and the Supreme Court, may adopt rules of court governing its practice so long as such rules are not in conflict with the rules promulgated by the Supreme Court of the State of Montana, in accordance with this act.

Section 5. This act shall not affect the power of any constitutional or statutory commission or board to make rules governing its practice.

Present laws and rules effective until changed.

Section 6. All present laws and rules relating to pleading, practice and procedure, shall be effective as rules of court until modified or superseded by subsequent court rule, and upon the adoption of any rule pursuant to this act such laws and rules, in so far as they are in conflict therewith, shall thereafter be of no further force and effect.

Court shall fix time.

Section 7. All rules promulgated under this Act shall be effective at a time fixed by the Supreme Court.

Right of legislature not abridged.

Section 8. This act shall not abridge the right of the Legislature to enact, modify, or repeal any statute or modify or repeal any rule of the Supreme Court adopted pursuant thereto.

Approved January 29, 1963.



HeinOnline -- 1963 vol. I 18 1963

## CHAPTER 17

An Act Amending Section 84-1818, R. C. M. 1947, to Provide That Applications for Refund of Gasoline License Tax Shall be filed Within Twelve (12) Months After the Date of Purchase.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 84-1818, R. C. M. 1947, is amended to read as follows:

"84-1818. **Refund of gasoline license tax—procedure.**

Procedure for refund of gasoline license tax.

(1) Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, motor boats, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be entitled to said refund or drawback of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenace and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town; provided, that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the State of Montana, upon presenting to the board of equalization of the State of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase

Statement and invoice presented—form.



HeinOnline -- 1963 vol. I 19 1963

and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additionad information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

12 month limitation on application.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the State of Montana within *twelve (12)* months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board and the state board of examiners, the state auditor shall draw his warrant upon the state treasurer for the amount of such claim and same shall be paid out of the gasoline license tax drawback fund in the same manner as other claims against the State are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

Board has 120 days to investigate.

Approval—warrant to issue.

Burden of proof.

Board may correct errors not involving fraud.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, after approval by the state board of examiners, as above provided, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is wilfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

Board may require amendment.

Board may reject fraudulent claim.

Application for permit—form.

(4) Any person desiring to claim refund on gasoline



HeinOnline -- 1963 vol. I 20 1963

purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

Record of permits.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

Permit fee.

A fee of one dollar ($1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

Suspension of permit.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

State subdivisions subject.

(7) All of the subdivisions of the state mentioned herein shall be subject to all of the conditions, rules and regulations applicable to individuals and as such subdivisions can act only by their officers and agents in presenting claims for refund they shall be responsible for and bound by the acts and declarations of such officers and agents.

Seller of gasoline shall make proper invoice.

(8) When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in



HeinOnline -- 1963 vol. I 21 1963

words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

Proof by affidavit—other evidence.

Seller shall retain duplicate invoice one year—inspection.

Seller shall obtain permit.

(9) Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefor to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number and the date of issuance. It shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollar ($1.00). Such permit must be renewed annually on or before the first day of January, 1956, and each year thereafter, upon such application and fee paid. After the effective date of this act, it shall be unlawful

Record of permits.

Permit fee.

Unlawful to sell without permit.



HeinOnline -- 1963 vol. I 22 1963

for any person, firm, corporation or association to sell such gasoline upon which a refund may be claimed without a valid permit therefor. If any such person, firm, corporation or association shall sell any such gasoline without being the holder of a valid permit therefor, he shall be punished by a fine of not less than twenty-five dollars ($25.00), or more than two hundred dollars ($200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment.''

Penalty.

Approved January 29, 1963.

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## CHAPTER 18

An Act to Approve and Legalize and Adopt as Prima Facie the Laws of Montana Replacement Volume Number 3 (in Two Part) and Replacement Volume Number 4 (in Two Parts) of the Revised Codes of Montana, 1947, as Published by the Publishers and Distributors of Said Codes.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Replacement Volume Number 3 (in two parts) and Replacement Volume Number 4 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

Replacement volumes 3 and 4 approved.

Sections cited without reference to session laws.

Section 2. Nothing herein contained shall be deemed as invalidating or in any matter affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said re-

Saving clause.



HeinOnline -- 1963 vol. I 23 1963

placement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or incorrectly set forth in said replacement volumes.

Effective immediately.

Section 3. This act is effective on its passage and approval.

Approved January 29, 1963.

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## CHAPTER 19

An Act to Amend Section 91-1101 and Section 91-1107 Revised Codes of Montana 1947, so as to change the Time for Contesting a Will After Probate Thereof from One Year to Six Months.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 91-1101, Revised Codes of Montana 1947, be, and the same is hereby amended to read as follows:

Probate may be contested within six months.

"91-1101. **The probate may be contested within** *six months.* When a will has been admitted to probate, any person interested may, at any time within *six months* after such probate, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked."

Petition.

Amending clause.

Section 2. That Section 91-1107, Revised Codes of Montana 1947, be, and the same is hereby amended to read as follows:

Probate— when conclusive.

"91-1107. **Probate — when conclusive —** *six months* **after removal of disability given to infants and others.** If no person, within *six months* after the probate of a will, contest the same or the validity thereof, the probate of the will is conclusive; saving to infants and persons of unsound mind a like period of *six months* after their respective disabilities are removed."

Six months after removal of disability.

Approved January 29, 1963.



HeinOnline -- 1963 vol. I 24 1963

## CHAPTER 20

An Act to Amend Section 3-2476 of the Revised Codes of Montana, 1947, Relating to the Definition of Ice Cream; to Provide that the Minimum Weight of Ice Cream Be Not Less Than Four and one-half (4½) Net Pounds Per Gallon.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 3-2476, R. C. M., 1947, is hereby amended to read as follows: Amending clause.

"3-2476. **'Ice Cream' defined — ingredients — standards.** (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored with one or more of the optional flavoring ingredients specified in subsection (d) of this section. Water may be added and one or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used; one or more of the optional acidity standardizing ingredients specified in subsection (g) may be used subject to the conditions set forth in subsections (e), (f) and (g), as the case may be. "Ice cream" defined.

Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total mild solids shall be such that the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively of the weight of the finished ice cream; except that when one or more of the optional flavoring ingredients specified in subsection (d), (4), (5), (6), (7) or (8) are used, then the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in subsection (d), (4), (5), (6), (7) or (8), but in no case shall it contain less than 9% of milk fat nor less than 16% of total milk solids. Ice cream shall contain Coloring and flavoring allowed—minimum milk content. 1.6 pounds food solids per gallon.



HeinOnline -- 1963 vol. I 25 1963

not less than 1.6 pounds of total food solids per gallon and shall weigh not less than *four and one half (4½) net pounds per gallon.*

Weight—4½ net pounds per gallon.

Optional dairy ingredients.

(b) The optional dairy ingredients referred to in subsection (a) of this section are cream, dried cream, butter, butter oil, concentrated milk fat, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk, nonfat dry milk solids, edible dry whey, cheese whey, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, and any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis. Harmless optional ingredients may be used to prevent fat oxidation in any of the foregoing optional dairy ingredients in an amount not exceeding .005% of the weight of the butter fat present in any such dairy ingredient.

Optional sweetening.

(c) The optional sweetening ingredients referred to in subsection (a) of this section are sugar, liquid sugar, dextrose, invert sugar (paste or syrup), lactose, corn sugar, dried or liquid corn syrup, maple syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, molasses, other than blackstrap).

Optional flavoring.

(d) The optional flavoring ingredients referred to in subsection (a) of this section are (1) natural food flavoring, (2) artificial food flavoring, (3) fruit juice, which may be fresh, frozen, canned, concentrated or dried and which may be sweetened and thickened with one or more of the optional stabilizing ingredients specified in subsection (b), (4) chocolate, (5) cocoa, (6) fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted or dried and which may be sweetened, thickened with stabilizer, and acidulated with citric, tartaric, malic, lactic or ascorbic acid, (7) nut meats, and (8) confectionery.

Egg content.

(e) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the total weight of egg yolk solids in any such ingredient used singly, or in combina-



HeinOnline -- 1963 vol. I 26 1963

tion of two or more such ingredients used, is less than the minimum prescribed by section 3-2478 for French ice cream.

Optional stabilizers—0.5% limitation.

(f) The optional stabilizing ingredients specified in subsection (a) of this section are gelatin, algin, extractive of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karava, locust bean gum, gum tragacanth, cellulose gum, guar seed gum, monoglycerides or diglycerides or both of fat forming fatty acids or other harmless stabilizers or emulsifiers; but the total weight of the active material contained in the solids of any such ingredients used singly, or of any combination of two or more such ingredients used, shall be not more than 0.5% of the weight of the finished ice cream.

Optional control ingredients—percent allowed.

(g) The following harmless optional ingredients or combination of such ingredients may be added to control viscosity, adjust protein stability and adjust pH of the combined mix ingredients:

(1) Sodium bicarbonate

(2) Magnesium oxide as such or as carbonate or hydroxide

(3) Calcium oxide as such or as hydroxide or sucrete

(4) Sodium citrate

(5) Sodium phosphates

The total of ingredients (1) through (3) shall not exceed 0.1% by weight of the finished mix; nor shall the weight of ingredients (4) and (5) exceed 0.2% by weight of finished mix.

Percent of lactic acid allowed

The percentage of developed lactic acid in the mix prior to the addition of the above listed optional ingredients shall not exceed 0.003% by weight for each one per cent (1%) of milk-solids-not-fat present in the mix.

Approved January 29, 1963.

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## CHAPTER 21

An Act Amending Sections 75-4146 and 75-4230, R. C. M.



HeinOnline -- 1963 vol. I 27 1963

1947, Relating to the Attendance of a High School Pupil Outside the County of His Residence.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-4146, R. C. M. 1947, is amended to read as follows:

Payment of transportation, board, rent or tuition—high school pupils.

"75-4146. **Expenditure of money for transportation of high school pupils.** Whenever any eligible high school pupil has been authorized to attend a high school situated in a county in another state and which county adjoins the *state of Montana,* as provided in section 75-4230, the board of trustees of the county high school, if there be a county high school for the county in which the pupil resides, or if there be no such county high school then the board of trustees of the school district in which such pupil resides, may expend any moneys belonging to the county high school, or school district, as the case may be, for the purpose of either paying for transportation of such pupil from the home of such pupil to the high school in the other state which is to be attended, or for board, rent or tuition for such pupil while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil if permission were given for attending a high school in another district in the county in which the pupil resides in accordance with the provisions of *law.*"

Amending clause.

Section 2. Section 75-4230, R. C. M. 1947, is amended to read as follows:

Authorized attendance outside county of residence.

"75-4230. **Attendance outside of county of pupil's residence—transfer of apportionment.** The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of *another* county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may



HeinOnline -- 1963 vol. I 28 1963

at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the *state of Montana.*

Procedure for application.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Clerk to report names of pupils.

Formula for payment of tuition.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by two hundred fifty dollars ($250.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred twenty-five dollars ($225.00) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred dollars ($200.00) in case of attendance at a high school with an average number be-



HeinOnline -- 1963 vol. I 29 1963

longing over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

Transfer budget.

The total of the transfer budget shall be subtracted from the receipts from the county ten (10 mill levy for high schools before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county tresaurer upon instructions from the county superintendent.

County treasurer shall remit annually.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Tuition for inmates of Montana state orphans' home.

Whenever pupils are inmates of the Montana state orphans' home at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall be reimbursed from the state public school equalization fund at the rate of two hundred fifty dollars ($250.00) for each such pupil; provided, however, that this amount of tuition is not considered as a part of state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Tuition on reciprocal basis for out of state attendance.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in



HeinOnline -- 1963 vol. I 30 1963

arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis."

Approved February 1, 1963.

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## CHAPTER 22

An Act to Require a True, Plain and Impartial Statement of the Meaning and Purpose of Any Referendum, Initiative or Constitutional Amendment Submitted to the Vote of the People of the State of Montana and Repealing All Acts and Parts of Acts in Conflict Therewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Secretary of state shall secure statement from attorney general to precede title of measure on ballot.

Section 1. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by Sections 37-105 and 23-1102 of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. The statement as prepared by the attorney general, shall be in addition to the legislative title of the measure. On the printing of the ballot, the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 1, 1963.



HeinOnline -- 1963 vol. I 31 1963

## CHAPTER 23

An Act to Amend Section 93-902, R. C. M. 1947, to Prohibit Any Justice or Judge of a Court of Record from Acting as an Administrator or Executor in any Estate, for Compensation.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 93-902, R. C. M. 1947, is amended to read as follows:

No justice, judge, clerk or sheriff shall practice law.

"93-902. **Certain officers not to practice law.** No justice, or judge of a court of record, county clerk, or clerk of any court, or sheriff, *shall* practice law in any court in this state, nor act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government, or courts of the United States, during his continuance in office, nor *shall* any justice of the peace practice law before any justice's court in the county in which he resides. *Provided, further, that no justice or judge of a court of record, shall act as administrator or executor of any estate for compensation.*"

No justice or judge shall act as administrator or executor for compensation.

Approved February 1, 1963.

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## CHAPTER 24

An Act to Amend Section 10-602, R. C. M. 1947, to Provide That the Crimes of Rape, Arson, and Assault in the Second Degree, Be Included in Those Crimes for Which a Child Over Sixteen (16) Years of Age May Be Prosecuted as an Adult.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 10-602, R. C. M. 1947, is amended to read as follows:

Definitions: "The court."

"10-602. **Definitions.** (1) Whenever the words 'the court' are used in this act, they mean the juvenile department of the district court as established by this act. Whenever the district court is meant, it is referred to as the district court.



HeinOnline -- 1963 vol. I 32 1963

"Child." The word 'child' means a person less than eighteen years of age.

"Adult." The word 'adult' means a person eighteen years of age or older.

Construction. The singular shall be construed to include the plural, and the plural the singular, and the masculine the feminine, when consistent with the intent of this act.

"Delinquent child" defined. (2) The words 'delinquent child' include:

(a) A child who has violated any ordinance of any city.

(b) A child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, *rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R. C. M. 1947, arson in the first and second degree, assault in the second degree,* assault in the first degree, robbery, first or second degree burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.

(c) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.

(d) A child who is habitually truant from school or home.

(e) A child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.

(f) A child who unlawfully, negligently, dangerously, or wilfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor.''

Approved February 2, 1963.



HeinOnline -- 1963 vol. I 33 1963

## CHAPTER 25

An Act to Amend Section 16-1803, Revised Codes of Montana, 1947, Relating to Requests for Bids in Making Purchases by County Commissioners; Providing That the Requirements of Said Section Shall Apply Also to Contracts for the Construction of Buildings.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 16-1803, R. C. M. 1947, is amended to read as follows:

Request for bids required—contracts for purchase and construction exceeding $2,000.00.

"16-1803. **Request for bids necessary in making** *contracts for* **purchases** *and for construction of buildings* **exceeding two thousand dollars.** (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind, *or for the construction of any building,* for which must be paid a sum in excess of two thousand dollars ($2,000.00) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of Chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

Publication of notice.

Contract let to lowest and best responsible bidder.

Exceptions.

Installment purchase where price exceeds $1,000.00.

(2) When the amount to be paid as the purchase price for any automobile, truck, or other vehicle, or road machinery of any kind, or for any other machinery, apparatus, appliance or equipment, or for any materials or sup-



HeinOnline -- 1963 vol. I 34 1963

plies of any kind, shall exceed one thousand dollars ($1,000.00) the board of county commissioners may provide for the payment of such purchase price in installments extending over a period of not more than three (3) years; provided that when the purchase price is extended over a term of two (2) years or at least forty (40%) per cent thereof shall be paid the first year and the remainder the second year and when such purchase price is extended over a term of three (3) years at least one-third of such purchase price to be paid each year; provided that, at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Rental—purchase agreement deemed contract for sale.

(3) Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials or supplies of any kind, which shall provide for payment of rental, by the county, and that after a certain fixed amount has been paid as rental, the property shall become the property of the county, or any other similar provisions or conditions, shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this section shall apply thereto and govern and control the same.''

Approved February 2, 1963.

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## CHAPTER 26

An Act to Amend Section 11-1202, Revised Codes of Montana, 1947, Relating to Awarding of Contracts by a City or Town for Work, Supplies or Materials for Which a Sum Must Be Paid Exceeding One Thousand Dollars ($1,000.00); Providing That the Requirements of Said Section Shall Apply Also to Contracts for the Construction of Buildings.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 11-1202, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 35 1963

Contracts exceeding $1,000.00 let to lowest responsible bidder.

"11-1202. **Awarding contracts—advertisement—limitations—installments—sales of supplies**—*construction of buildings* — **purchases from government agencies — exemptions.** All contracts for work, or for supplies, or for material, *or for the construction of any building,* for which must be paid a sum exceeding one thousand dollars ($1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths (3/4) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

Contract of 3 years or more to be submitted to voters.

Advertisement.

Posting.

Publication.

Council may postpone action—reject bids.

Exceptions.

Installment purchase over $1,000.00.

When the amount to be paid under any such contract shall exceed one thousand dollars ($1,000.00) the council may provide for the payment of such amount in install-



HeinOnline -- 1963 vol. I 36 1963

ments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third (1/3) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

City or town may sell or trade.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

City or town may purchase from government agencies without bid.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

Excluded services.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act."

Approved February 2, 1963.

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## CHAPTER 27

An Act Providing for a Corporate Surety Bond for Operation of a Public Warehouse; Amending Section 3-228, R. C. M. 1947, to Require Bond Be Furnished by a Corporate Surety.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 3-228, R. C. M. 1947, is hereby amended to read as follows:



HeinOnline -- 1963 vol. I 37 1963

Warehouse operator must give bond.

"3-228. **Bond — license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license.** Each person, firm, corporation or association or persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, grain dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July each year, give a bond *executed by a corporate surety authorized to do business in the state of Montana* to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by Section 3-229, Revised Codes of Montana, 1947. Provided, however, that where a truck, tractor-trailer owner or operator purchasing grain in Montana for the first time for cash or by certified check, the bond provided for in this act shall not be required.

Corporate surety.

Exception.

License fee.

Every person or persons, firm, co-partnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars ($15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, where or in which grain is received, stored and or shipped, and upon the payment of such fee of fifteen dollars ($15.00) for each and every warehouse, elevator, truck, tractor-trailer unit or other place, where or in which grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firms, co-partnership, corporation or association of persons, a license to engage in grain merchandising at the place or with the licensed units designated within the state of Montana, for a period of one (1) year save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain. And save further that a producer may

Commissioner of agriculture shall issue license.



HeinOnline -- 1963 vol. I 38 1963

buy and haul grain for his own use and that of his neighbors in his community, and save further that the operator of a feed lot in the state of Montana may buy and haul grain for use on his own lot. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than three hundred dollars ($300.00) nor more than five hundred dollars ($500.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

Misdemeanor to do business without license.

Penalty.

Each day separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement."

Adequate insurance approved by commissioner.

Approved February 2, 1963.

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## CHAPTER 28

An Act to Amend Section 26-202.3, R. C. M. 1947, to Clarify the Definition of a Resident for Hunting and Fishing License Purposes, and Deleting an Obsolete Provision on Citizenship Papers.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 26-202.3, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 26-202.3. **Defining resident.** That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

Resident defined for purpose of issuing fishing and hunting license.

(1) That members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United

Members of armed forces and families.



HeinOnline -- 1963 vol. I 39 1963

States, who are assigned to duty in Montana, and members of their immediate families, and after a period of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

U. S. citizen— 6 months residence in state.

(2) Any citizen of the United States of America who has continuously resided within the State of Montana for a period of six (6) months immediately prior to making application for said license, *or* who is a legal resident of the State, shall be eligible to receive a resident hunting or fishing license."

Legal resident of state.

Approved February 2, 1963.

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## CHAPTER 29

An Act to Amend Section 3-1103, Revised Codes of Montana, 1947, Relating to the Prevention of the Spread of Contagious Disease Among Fruit and Fruit Trees, to Allow the Re-use of Any Crate, Box, Barrel, Package or Wrapping Once Having Contained Fruit.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 3-1103, R. C. M., 1947, is hereby amended to read as follows:

"3-1103. **Destruction of fruit pests — use of crates.** For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be posted in three conspicu-

Commissioner of agriculture may regulate to prevent spread of fruit disease and pests.

Circulation.

Publication.



HeinOnline -- 1963 vol. I 40 1963

ous places in each county in the state, one of which shall be at the county courthouse thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

Second use of nursery stock container unlawful—fumigation or destruction.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators."

Authority to destroy and prosecute.

Approved February 2, 1963.

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## CHAPTER 30

An Act to Amend Section 3-1404, Revised Codes of Montana, 1947, Relating to the Grading, Branding and Labeling of Farm Products; to Provide for the Repeal of Subsection F and Making the U. S. Commercial Grade a Standard Grade in the State of Montana.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 3-1404, R. C. M. 1947, is amended to read as follows:

Amending clause.

"3-1404. **Grading and branding of products required —labeling of culls—potato grading.** (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corpora-

Farm products must be graded and branded for sale.



HeinOnline -- 1963 vol. I 41 1963

tion to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or consignment in interstate or intrastate commerce, farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

Culls and unclassified products.

(b) Provided that farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word 'culls' or 'unclassified' shall be used.

"Unclassified" defined.

(c) Provided that all products branded 'unclassified' must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

Seed purposes.

(d) Provided further that farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded 'For Seed Purposes.'

U. S. commercial grade is standard grade for state.

(e) Provided further that U. S. commercial grade shall be a standard grade in the state of Montana."

Approved February 2, 1963.

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## CHAPTER 31

An Act to Amend Section 46-1411, Revised Codes of Montana, 1947, Relating to the Duty of Owners or Possessors of Unfenced Lands or Patented Mining Claims Within or Adjacent to National Forest Reserves to Mark the Boundaries Thereof, to Provide That the Same Duty Shall Be Imposed Upon the Owner or Possessor of an Unpatented Mining Claim; and to Amend Section 46-1413, Revised Codes of Montana, 1947, Relating to Limitations on the Right to Bring Action Against the Owner of Trespassing Livestock Where Boundaries Have Not Been Marked, to Provide that Such Limitations Shall Be Applicable to Unpatented Mining Claims and to All Livestock; Repealing All



HeinOnline -- 1963 vol. I 42 1963

Acts and Parts of Acts in Conflict Herewith; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 46-1411 of the Revised Codes of Montana, 1947, is amended to read as follows:

Amending clause.

"46-1411. **Marking land and mining claims in national forests.** It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented *or unpatented* mining claims, which said lands or patented *or unpatented* mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced."

Duty to mark boundaries of mining claims.

Section 2. Section 46-1413 of the Revised Codes of Montana, 1947, is amended to read as follows:

Amending clause.

"46-1413. **Marking—right of action against trespassing stock.** No person owning or possessing agricultural or grazing land, or patented *or unpatented* mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said *livestock* so trespassing strayed thereon on their own inclination and without being driven, or whether said *livestock* were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass."

Right of action for trespassing livestock.

Person having actual knowledge cannot claim exemption.

Demand.



HeinOnline -- 1963 vol. I 43 1963

Repealing clause.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Section 4. This act shall be effective from and after its passage and approval.

Approved February 2, 1963.

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## CHAPTER 32

An Act Amending Section 43-310, R. C. M., 1947, to Provide for an Increase in the Mileage Payments to Members of the Legislative Assembly.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 43-310, R. C. M., 1947, is amended to read as follows:

Legislator per diem $20.00.

"43-310. **Per diem and mileage of members.** Members of the legislative assembly hereafter elected shall receive twenty dollars ($20.00) per day, payable weekly, during the session of the legislative assembly, and *eight*

8c travel mileage.

*cents (8¢)* per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route."

Approved February 4, 1963.

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## CHAPTER 33

An Act to Amend Section 16-1015, R. C. M. 1947, Relating to the Powers and Duties of County Commissioners to Levy an Annual Tax on the Taxable Property of the County to Defray Current Expenses, Including Salaries not Otherwise Provided for, Not Exceeding Sixteen (16) Mills for Any One (1) Year and to Levy Such Taxes as Are Required by Special or Local Statutes; and Providing for an Additional Levy of Four (4) Mills for a Prescribed Period.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 16-1015, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 44 1963

"16-1015. **Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills, except as hereinafter provided, on each dollar of the taxable valuation for any one (1) year to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, *1963,* and extending to June 30th, *1965,* the board of county commissioners is authorized in its discretion to levy an additional four (4) mills on each dollar of the taxable valuation for any one (1) year, provided, however, after that period of time the levy of sixteen (16) mills shall still be in effect."

Power of county commissioners to levy tax not exceeding 16 mills.

Additional 4 mill levy provided.

Approved February 4, 1963.

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## CHAPTER 34

An Act to Establish Legal Capacity and Obligation of Minors in Contracting to Borrow Money to Finance Education Beyond High School.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

Minor has full legal capacity to contract for loan to attend college.

Approved February 4, 1963.

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## CHAPTER 35

An Act to Amend Section 79-301, R. C. M. 1947, Relating to Deposit of Funds in the Hands of the State Treas-



HeinOnline -- 1963 vol. I 45 1963

urer and Providing for the Substitution of Securities Pledged for the Security of Such Deposits.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 79-301, R. C. M. 1947, is amended to read as follows:

Duty of state treasurer to deposit public moneys.

"79-301. (182) **State depository board—funds in the hands of the state treasurer.** (1) It shall be the duty of the state treasurer to deposit public moneys in his possession and under his control in solvent banks located in the state of Montana, except as otherwise provided by law, subject to national supervision or state examination, as designated by the state depository board, and no other. The state depository board may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks and said state depository board, which rate shall be fixed semi-annually: the first rate fixing date to be not later than thirty (30) days after the final passage and approval of this act; thereafter, the interest rate shall be fixed semi-annually during the months of July and January of each year.

Depository board may require payment of interest.

No deposits in excess of insured amount unless secured.

(2) No deposits in excess of the amount guaranteed or insured according to law shall be made of state funds by said depository board, or by the state treasurer under the direction of said board, unless such bank shall first have delivered to the state treasurer or trustee with some solvent bank as hereinafter provided, as security therefor, cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States Government and its dependents, bonds guaranteed by the United States Government or its dependents, bonds of the Federal Land Banks, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town, or school district of the state of Montana, which are a general obligation of such county, city, town or school district, or bonds of some good solvent surety company authorized to do business in the state of Montana, in at least the amount of such deposits in excess of the amount guaranteed or insured according to law, which bonds or security shall be first approved by the state depository board; provided, that the state depository board may



HeinOnline -- 1963 vol. I 46 1963

require security in a greater amount than that above named; provided, that when negotiable securities are furnished, such securities may be placed in trust and the trustees' receipt may be accepted in lieu of the actual securities when such receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustees have been approved by the state examner.

Board may require greater security.

Trust receipts may be accepted.

(3) No deposit of said funds shall be made or permitted to remain in any bank unless such bank shall have first been designated as a depository by said depository board, nor until the security for the deposit in excess of the amount of such deposit guaranteed or insured according to law shall have first been deposited with the state treasurer, or placed with a trustee, as herein provided, and has been approved by the state depository board. All interest paid and collected on deposits shall be by the state treasurer credited to the general fund of the state. The state depository board shall have the power of directing the withdrawal by the state treasurer of all moneys from any bank for any reason.

Designation of depository bank.

Interest credited to general fund.

(4) When moneys shall have been deposited, under the direction of said depository board and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. It shall be the duty of the state treasurer to deposit funds in such banks, and in such amounts as may be designated by the state depository board, and to withdraw such deposits when instructed so to do by the said board. But said state treasurer shall have the authority, either with or without the direction of said state depository board, to withdraw all of such deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law, except as above. Nothing herein shall be construed as limiting or impairing the right of the state board of land commissioners to invest public moneys in bonds or other securities as otherwise provided by law.

Treasurer not liable for loss.

Duty of treasurer.

Authority of treasurer to withdraw deposits.

*(5) Any bank pledging securities as provided in this act may at any time it deems it advisable or desirable*

Bank may substitute securities.



HeinOnline -- 1963 vol. I 47 1963

Approval by board.

Requirements.

Duty of trustee to forward receipt.

*substitute securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the state depository board at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank.''*

Approved February 4, 1963.

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## CHAPTER 36

An Act to Amend Section 26-202.1, R. C. M. 1947, to Provide That Any Child Residing at the Montana Children's Center at Twin Bridges Shall be Entitled to Fish Without a License.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 26-202.1, R. C. M. 1947, is amended to read as follows:

''26-202.1. **Licenses—fees—classification of licenses—fees and powers under licenses.** (1) Class A License. Resident Game Bird and Fishing License. Upon payment of a fee of three dollars ($3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to pursue, hunt, shoot and kill game birds and possess dead bodies of game birds, and to fish with hook and line or rod as authorized by regulations of the commission.

$3.00 fee—resident game bird and fishing license.

(2) **Class A-1 License.** Resident Big Game License. Except as herein provided, any holder of a Class A license, who is twelve (12) years of age or older, may, upon payment of an additional sum of three dollars ($3.00), be entitled to a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game animals and possess the carcass of game animals of the

$3.00 fee—resident big game license.



HeinOnline -- 1963 vol. I 48 1963

state which are authorized by the commission to be pursued, hunted, shot, killed, taken or possessed.

Requirements—resident under 18 years of age.

(a) On and after January 1, 1958, no big game hunting license shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license either: (1) evidence that he has held a hunting license issued by this state in a prior year, or (2) a certificate of competency as provided by this section; providing further that all resident persons under fifteen (15) years of age must present a certificate of competency even if he has held a hunting license in prior years.

Prior license.

Certificate of competency.

Department shall provide for course of instruction—handling firearms.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person, found by it to be competent, to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed, a certificate of competency in the safe handling of firearms.

$2.00 fee—bow and arrow license.

(3) **Class A-2 License—Special Bow and Arrow License.** To Pursue, Hunt, Shoot, Kill, Take and Possess Deer, Antelope and Elk. Any holder of a Class A-1 license may, upon payment of an additional sum of two dollars ($2.00) to any agent of the fish and game commission, authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, and in special areas, as same may be designated by the fish and game commission.

$10.00 fee—nonresident fishing license.

(4) **Class B License—Nonresident, or a Person Having Less Than Six (6) Months Residence in the State.** Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars ($10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled



HeinOnline -- 1963 vol. I 49 1963

to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

$25.00 fee—nonresident game bird license.

(5) **Class B-1 License—Nonresident and Persons Having Less Than Six (6) Months Residence in the State.** Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars ($25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

$100.00 fee—nonresident big game license.

(6) **Class B-2 License—Nonresident or Persons Having Less Than Six (6) Months Residence in the State.** Big Game License. Any nonresident of the State of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars ($100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

$3.00 fee—temporary nonresident fishing license.

(7) **Class B-3 License—Temporary Nonresident or Tourist License.** Any nonresident of the state of Montana, upon payment of the sum of three dollars ($3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

Special big game license—fees.

(8) **Special Licenses.** Any applicant who is the holder of a Class A-1 resident big game license or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which, in



HeinOnline -- 1963 vol. I 50 1963

the judgment of the fish and game commission is to be issued and shall pay the folowing fees therefor:

Moose, twenty-five dollars ($25.00).

Mountain Goat, five dollars ($5.00).

Mountain Sheep, fifteen dollars ($15.00).

Bison or Buffalo, twenty-five dollars ($25.00).

$10.00 fee—trapper's license.

(9) **Class C License—Trapper's License.** Any holder of a Class A license, upon making application and paying the sum of ten dollars ($10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, except beaver, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

$1.00 fee—landowner's trapper's license.

(10) **Class C-1 License—Land Owner's Trapper's License.** Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

Resident over 70 years of age and child resident of Montana children's center may fish and hunt game birds without license.

(11) **Exceptions.** Any person a resident of the state of Montana as defined in section 27-202.3 of the Revised Codes of Montana, 1947, subsection 2, chapter 267, Laws of Montana, 1955, who has attained the age of seventy (70) years, shall be entitled to fish and hunt game birds without a Class A license, *and that any child residing at the Montana Children's Center at Twin Bridges, will be entitled to fish without a license,* provided that said persons carry proof age, *or proof of residency at the Montana Children's Center,* in lieu of the Class A license described in the foregoing subsection (1), and provided that for persons convicted of any violation of the fish and game



HeinOnline -- 1963 vol. I 51 1963

Revocation for violation of fish and game laws.

laws or regulations of the state of Montana, the privilege conferred by this subsection shall be revoked for a period of not less than six (6) months." *A written statement from the superintendent of the Montana Children's Center is proof of residency at that institution.*

Approved February 8, 1963.

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## CHAPTER 37

An Act to Amend Section 46-1005 of the Revised Codes of Montana, 1947, by Enlarging the Definition of an Estray to Include Sheep and Lamb.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 46-1005, R. C. M., 1947, be, and the same is hereby amended to read as follows:

"Estray" defined.

46-1005. "**Estray," as herein used, defined.** An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, *sheep, or lamb,* not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 8, 1963.



HeinOnline -- 1963 vol. I 52 1963

## CHAPTER 38

An Act to Amend Section 26-701, and to Repeal Sections 26-702, 26-703, and 26-707, Revised Codes of Montana, 1947, Relating to Shipment of Animals From the State.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 26-701, Revised Codes of Montana, 1947, as amended, is amended to read as follows: Amending clause.

"Section 26-701. **Removal of Animals or Parts of Animals From the State Unlawful, When** *Illegally Taken.* It is hereby declared to be unlawful and a misdemeanor, punishable as provided by Section 26-324, for any person or persons, to *possess,* ship or take out of the State any *illegally taken* game and non-game birds, fish, game animals, furbearing animals or the skins of furbearing animals, or any parts thereof, whether taken within or coming from without the State." Unlawful to possess or remove illegally taken game.

Section 2. Section 26-702, 26-703, and 26-707, Revised Codes of Montana, 1947, are repealed. Repealing clause.

Section 3. This act is effective May 1, 1963. Effective May 1, 1963.

Approved February 8, 1963.

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## CHAPTER 39

An Act to Amend Section 5-1028, R. C. M. 1947, Prohibiting Branch Banking and Providing for Drive-in and Walk-up Facilities.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 5-1028, R. C. M. 1947, is hereby amended to read as follows: Amending clause.

"5-1028. (6014.112) **Branch bank prohibited—***exceptions.* No bank shall maintain any branch bank, receive deposits or pay checks, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearing house transactions between banks. Branch bank prohibited except one detached drive-in and walk-up facility.

*"With the prior approval of the superintendent of banks, any bank doing business in this state may estab-*



HeinOnline -- 1963 vol. I 53 1963

*lish and maintain not more than one (1) detached drive-in and walk-up facility consisting of one (1) or more teller's windows. The distance of the facility from the main banking house shall not exceed one thousand (1,000) feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility shall not be closer than two hundred (200) feet to a facility operated by any other bank nor closer than three hundred (300) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank and such other transactions as are normally and usually conducted or handled at tellers' windows in the main banking house.''*

Distance limitations.

Service limitations.

Approved February 8 ,19663.

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## CHAPTER 40

An Act to Amend Section 16-2618, R. C. M. 1947, Relating to Deposit of Public Funds by County, City and Town Treasurers, and Providing for the Substitution of Securities Pledged for the Security of Such Deposits.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Amending clause.

Section 1. Section 16-2618, R. C. M. 1947, is amended to read as follows:

Duty of county, city and town treasurers to deposit public moneys.

''16-2618. (4767) **Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council, in the

Security required.



HeinOnline -- 1963 vol. I 54 1963

case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a *savings or* time deposit; and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

Savings or time deposit.

Investment in government bonds.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

Security shall consist of bonds.

Ninety per centum of market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-

Negotiable securities placed in trust.



HeinOnline -- 1963 vol. I 55 1963

Minute entry of approval.

mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

Deposits distributed ratably.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

State examiner shall order proper distribution.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has

Deposit in convenient banks.

Bank shall furnish statement.



HeinOnline -- 1963 vol. I 56 1963

paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necesary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

Deposits subject to withdrawal.

(6) All interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

Interest shall be credited to general fund.

Treasurer not liable for loss.

(7) Any bank pledging securities as provided in this act at any time it deems it advisable or desirable may substitute *like* securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such *securities* so substituted shall at the time of substitution *be at least equal in principal amount to the securities for which substitution is made.* In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, a receipt specifically descrbiing and identifying both the securities so substituted and those released and returned to the depository bank.''

Bank may substitute like securities—approval.

Equal value.

Trustee's receipt.

Approved February 8, 1963.

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## CHAPTER 41

An Act Regulating the Operation of Mortuaries and the Practice of Mortuary Science and Funeral Directing;



HeinOnline -- 1963 vol. I 57 1963

Establishing a State Board of Morticians; Amending Sections 69-119, 69-2306, 69-2309, 69-2310, and 9-604, R. C. M. 1947; and Repealing Sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710, and 82-711, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Definitions.

Section 1. **Definitions.** As used in this act.

"Board."

(1) "Board" means the state board of morticians.

"Funeral directing."

(2) "Funeral directing" includes:

(a) supervising funerals,

(b) preparing dead bodies for burial other than by embalming,

(c) maintaining a mortuary for the preparation, disposition or care of dead human bodies, and

(d) the holding out to the public that one is a funeral director or undertaker.

"Embalming."

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

"Mortuary science."

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

"Mortician."

(5) A "mortician" is a person licensed under the laws of the state of Montana to practice mortuary science.

"Mortuary."

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

Five licensed morticians appointed by governor to state board.

Section 2. **State Board of Morticians—appointment and term of office.** There is in state government a state board of morticians consisting of five licensed morticians appointed by the governor with the advice and consent of the senate. The original members of the board shall

Term of office.

be appointed for one (1), two (2), three (3), four (4), and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose



HeinOnline -- 1963 vol. I 58 1963

term has not expired shall be for the remainder of the term.

Board shall elect officers.

Section 3. **Officers of board—compensation of members.** The board shall elect a chairman, a secretary- treasurer, and any other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. In addition to such reimbursement the secretary-treasurer may be paid a salary set by the board.

Expense allowance.

Salary for secretary-treasurer

Meetings—three members constitute quorum.

Section 4. **Meetings—quorum—rules and regulations.** The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules and regulations to carry out the purposes of this act.

Board may employ personnel.

Section 5. **Employees of board.** The board may employ whatever temporary or permanent personnel are necessary to carry out the provisions of this act.

Moneys shall be deposited with state treasurer.

Section 6. **Disposition of fees.** All moneys collected by the board shall be deposited with the state treasury and shall be used only for the purposes of defraying the necessary expenses of administering this act.

License required to practice funeral directing.

Section 7. **Funeral directing.** The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the board. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license upon payment of an annual license fee to the board on July 1 of each year. The amount of the annual license fee shall be set by the board but shall not exceed five dollars ($5). A funeral director's license shall not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

Annual fee.

Qualifications for license.

Section 8. **Embalming and mortuary science—qualifications for mortician's license.** The practice of embalming or mortuary science is prohibited by any one who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be at least twenty-one (21) years of age.



HeinOnline -- 1963 vol. I 59 1963

(2) Be of good moral character.

(3) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(4) Pass an examination prescribed by the board.

(5) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

Examination provided by board.

Section 9. **Examination for morticians.** A person possessing the necessary qualifications may apply to the board for a license and upon payment of an application fee of twenty-five ($25.00), may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July of each year in Helena and at such other times and places as the board deems necessary.

Intern license.

Section 10. **Intern mortician's license.** An applicant who passes the examination, upon payment of a license fee of three dollars ($3.00), shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana, and upon completion of one year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

Mortician's license—annual fee and renewal.

Section 11. **Mortician's license—fee and renewal.** (1) The annual license fee for a mortician's license must be in the hands of the secretary-treasurer or postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but shall not exceed ten dollars ($10.00). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of such date, apply for and receive a mortician's license upon payment of the license fee.

Suspension and reinstatement.

(2) Failure to pay the annual license fee shall result in automatic suspension of the license. The license may be reinstated by the payment of all unpaid license fees plus a penalty of twenty-five dollars ($25.00).

Reciprocity.

Section 12. **Reciprocity.** If a person holding a license



HeinOnline -- 1963 vol. I 60 1963

entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if such state has a reciprocal agreement with Montana.

Mortuary license.

Section 13. **Operation and licensing of mortuaries.** (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place. The board may adopt rules and regulations prescribing reasonable standards for such establishments, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules and regulations are complied with. Such inspection or inspections shall be made at the discretion of the board, and may be without notice.

Board may adopt rules and regulations.

Inspection fee.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board, but not to exceed twenty-five dollars ($25.00) per year.

Suspension or revocation—proof.

(3) A mortuary license may be suspended or revoked upon proof of

(a) non-compliance of board rules or regulations relating to the operation of mortuaries,

(b) violation of any of the laws, rules, or regulations of the state, district, or local board of health governing the disposition of dead human bodies, or,

(c) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

(4) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

Refusal, suspension or revocation of mortician's or funeral director's license.

Section 14. **Refusal to grant, suspension and revocation of mortician's and funeral director's license.** The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) If the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license, or in passing the examination.



HeinOnline -- 1963 vol. I 61 1963

(2) If the applicant or licensee has been convicted of a felony.

(3) If the applicant or licensee has violated any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies, or any rule of the board regulating the professions of mortuary science or funeral directing, or the operation of a mortuary.

(4) If the licensee has participated in any scheme in the nature of a burial association or burial certificate plan which does not properly protect the rights of the public, or where there is any element of fraud, or where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral, or the freedom of choice as to which funeral directors or morticians shall be employed.

Hearing and notice.

Section 15. **Hearing and notice—revocation and suspension of licenses.** No action to suspend, revoke, or cancel a license shall be taken by the board until the accused has been furnished, at least thirty (30) days prior to the date of the hearing, with a statement of the charges against him and notice of the time and place of hearing the charges. If, upon the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person. A stenographic report of each proceeding to revoke or suspend the license shall be made at the expense of the board and a transcript kept in its files. A copy of the transcript shall be furnished to the person so charged and accused.

Appeal procedure—district court.

Section 16. **Appeal.** A person who has been refused a license or whose license has been revoked or suspended, may file with the secretary of the board, within thirty (30) days after the decision of the board, a written

Notice of appeal.

notice of appeal to any district court of the State of Montana. The court is limited in its proceedings to a

Determination on appeal limited.

determination of whether the action of the board was in accord or consistent with this act or the constitution of this state, or whether the action of the board was arbitrary or an abuse of discretion. When a notice of appeal is filed the secretary of the board shall transmit



HeinOnline -- 1963 vol. I 62 1963

to the clerk of the court the record of the board's proceedings. The judgment of a district court of the state of Montana, may, in the manner provided for appeal of civil action, be reviewed upon proceedings on appeal in the supreme court.

Appeal—supreme court.

Section 17. **Penalty provision.** A person who violates this act is guilty of a misdemeanor.

Penalty for violation.

Section 18. Section 69-119, R. C. M., 1947, is amended to read as follows:

Amending clause.

"69-119. **Rules and regulations for transportation of dead bodies.** The state board of health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practicable, be in conformity with similar rules and regulations now in force in other North American states and countries."

Rules and regulations by board—transportation of dead bodies.

Section 19. Section 69-2306, R. C. M. 1947, is amended to read as follows:

Amending clause.

"69-2306. **Burial permit to accompany body—burial.** The burial permit shall accompany the body to said educational institution and by it be properly registered for burial and buried by a licensed *mortician* or *funeral director*, at the expense of the institution of higher learning making application for the use of said dead human bodies."

Burial permit shall accompany body—expense of burial.

Section 20. Section 69-2309, R. C. M. 1947, is amended to read as follows:

Amending clause.

"69-2309. **Qualifications to perform autopsies or post-mortem examinations—written report.** All dissections, autopsies or other post-mortem examinations involving dissection of any part of the human body, (except preparation of the body for burial or cremation by duly licensed *morticians or funeral directors),* shall be performed by a physician or surgeon duly licensed to practice such profession by the state board of medical examiners of the state of Montana, and upon completion of any such dissection, autopsy or other post-mortem examination, the physician or surgeon, whether one or more participating, shall deliver a written report thereof, together with his findings as to cause of death, to the next of kin of decedent, or the representative of decendent's estate, or to

Licensed physician or surgeon to perform autopsy.

Written report shall be made.



HeinOnline -- 1963 vol. I 63 1963

other persons lawfully requesting such procedures in the cases herein permitted."

Amending clause.

Section 21. Section 69-2310, R. C. M., 1947, is amended to read as follows:

Autopsy performed contrary to law—misdemeanor.

"69-2310. **Autopsy performed contrary to law a misdemeanor—persons exempt from law.** Every person who shall make, or cause to be made, any dissection of the body of a human being, or to have any autopsy performed thereon, or to have any other post-mortem examination performed and accomplished except as hereinbefore provided, shall be guilty of a misdemeanor. But nothing in this act shall affect, impair or restrict the right of a duly licensed mortician to dissect the dead body of a human to the extent necessary and proper in the preservation or preparation of such body for burial, cremation or other lawful disposition, in all cases as authorized by the laws of Montana."

Exception.

Amending clause.

Section 22. Section 9-604, R. C. M., 1947, is amended to read as follows:

Limitation of action against mausoleum.

"9-604. **Limitation of actions against mausoleum-columbarium—funeral directors** *and morticians* **exempt from liability.** No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed *mortician or* funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana."

Exemption—deposit of cremated remains.

Severability.

Section 23. **Severability clause.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.



HeinOnline -- 1963 vol. I 64 1963

Repealing clause.

Section 24. **Repeal.** Sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710 and 82-711, R. C. M., 1947, are repealed.

Approved February 15, 1963.

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## CHAPTER 42

An Act Providing for a Recount of Votes in Elections; Declaring the Method of Determining When a Recount May be Requested; Specifying the Duties of the Secretary of of State and the County Clerks; Establishing County Recount Boards; Providing the Method of Recount; Providing for the Expense of a Recount; and Amending Sections 23-1611, 23-1712, and 23-1807, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Purpose of act—determination of ballot count.

Section 1. It is the purpose of this act to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this act shall be liberally construed to that end.

Section 2. The provisions herein shall apply to the recount of ballots cast in any election.

Recount conditions.

Section 3. A recount shall be made under any of the following conditions:

Defeated county candidate may file petition with county clerk.

1. When any candidate for any office, position, or nomination which is voted upon only by the electors of one county, or some part thereof, except the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one per cent (¼ of 1%) of the total vote cast for all candidates for such office, position, or nomination, or is defeated by a margin not exceeding ten (10) votes, whichever is the greater, he may within five (5) days after completion of the official canvass of the returns file with the county clerk his duly verified petition stating he believes a recount will change the result and praying for a recount of all votes cast for such office, position, or nomination.



HeinOnline -- 1963 vol. I 65 1963

Defeated state candidate or district judge may file petition with secretary of state.

2. Whenever any candidate for any office, position, or nomination which is voted upon in more than one county or for the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one percent (¼ of 1%) of the total vote cast for all candidates for such office, position, or nomination, he may within five (5) days after completion of the official canvass of the returns file a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk whose county includes any precincts which voted for such office, position, or nomination of the filing of such petition, and the recount shall be conducted as to all of such precincts in each such county.

Electors may file petition with secretary of state for recount on referendum.

3. Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one percent (¼ of 1%) of the total vote cast for and against on such question, there may be filed with the secretary of state within five (5) days after the completion of the official canvass, a petition signed by not less than one hundred (100) legally qualified electors of the state, and representing at least five (5) counties of the state, a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk of the filing of such petition, and the recount shall be conducted as to all precincts in each county.

Tie vote—recount.

Section 4. When by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall be the duty of the canvass board making such canvass to certify said vote to the county clerk where the election involved is confined to one county, except for the office of district judge, and to the secretary of state as to all other elections. The county clerk, or the secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under this act, and the recount shall proceed acordingly. In case of a tie vote found to exist



HeinOnline -- 1963 vol. I 66 1963

after the recount, such tie vote shall be resolved as provided by existing statutes.

Total vote cast—formula.

Section 5. When in any election an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for such office shall for the purposes of this act be the total vote actually cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

County recount board—three county commissioners.

Section 6. The county recount board of each county shall consist of the three members of the board of county commissioners. If at the time and place appointed for the recount one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following county officers, whose duty it is to act in the order named: the treasurer, the assessor, the sheriff, the clerk of court. The county recount board shall always consist of three acting members. If any member of the county recount board was among the candidates for an office, nomination, or position to which votes are to be recounted, he shall thereby be disqualified.

County Clerk—clerk of recount board.

Section 7. The county clerk shall be the clerk of the county recount board, and the board may hire additional clerks as needed.

Clerk shall notify recount board.

Section 8. The county clerk shall immediately upon the filing with him of any petition for a recount, or upon receipt from the secretary of state of notice of such filing with the secretary of state, notify the members of the county recount board. The board shall then convene at the usual place of meeting of the county commisioners without undue delay, and in no event more than five (5) days after the filing of the petition with the county clerk or the notice of the filing with the secretary of state.

Board shall convene within five days.

Candidate may witness recount.

Section 9. Each candidate for any office, nomination, or position involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, one legally qualified elector of the state favoring each side as to such question may

Elector for each side of submitted question may witness recount.



HeinOnline -- 1963 vol. I 67 1963

be present and represent such side. The county clerk shall produce, unopened, the sealed package or envelope received by him from the judges of election of each election precinct in the county. The procedure for conducting the recount of votes shall be as provided in subsection three (3) of Section 23-2304, R. C. M. 1947, and the recount shall proceed as expeditiously as reasonably possible until completed.

Recount board shall certify result—procedure.

Section 10. Immediately upon conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate must be signed by at least two members of such board, attested under seal by the county clerk. The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, shall adequately designate each precinct recounted, the vote of such precinct according to the official canvass thereof previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as determined by the board through the recount. When the certificate relates to the recount ballots as to an office, nomination, position, or question voted upon in more than one county or for the office of judge of the district court, the certificate shall be made in duplicate, and either the original or duplicate original immediately transmitted to the secretary of state by registered mail. If the recount relates to the recount of ballots as to an office, nomination, position, or question voted upon in only one county, or some part thereof, the county recount board shall immediately re-canvass the returns as corrected by the certificate showing the result of the recount, and make a new and corrected abstract of the votes cast. If such correct abstract shows no change in the result as previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated.

Certificate to secretary of state.

Corrected abstract.

New certificate.

Secretary shall reconvene state board of canvassers.

Section 11. Upon receipt by the secretary of state of certificates by all county recount boards required to be forwarded, the secretary of state shall file the same, and fix a time and place as early as reasonably possible for re-convening the state board of canvassers, and shall



HeinOnline -- 1963 vol. I 68 1963

notify the members of the state board of canvassers thereof. The state board of canvassers shall re-convene at the time and place designated and re-canvass the official returns as to such office, nomination, position or question, as corrected by such certificates, and shall make a new and corrected abstract of the votes cast. If such corrected abstract shows no change in the result previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated.

Corrected abstract.

New certificate.

Section 12. Any certificate of nomination or election issued under the provisions of this act shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which is inconsistent with the new certificate, and the holder of any certificate of nomination or election issued under this act shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

Effect of new certificate.

Section 13. When a tie vote between candidates is found to exist on the basis of the recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by section 23-1901 to 23-1904, R. C. M. 1947.

Indeterminable tie vote.

Section 14. The expense of the recount of the votes as provided in this act shall be a county charge, except that any expenses of the secretary of state, and state board of canvassers shall be a state charge.

Expense of recount.

Section 15. This act is supplemental to and not in derogation of the law relating to contest of elections, or the recount procedure set forth in Sections 23-2301 to 23-2308, R. C. M. 1947.

Act is supplemental.

Section 16. Section 23-1611, R. C. M. 1947, is amended to read as follows:

Amending clause

"23-1611. **Election returns.** (1) The judges, as soon as the count is completed and fully ascertained, shall place the machine for one hour in such position that the

Judges shall place machine in full view of public for one hour.



HeinOnline -- 1963 vol. I 69 1963

registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Immediately after the above said one hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty (30) days, unless opened by order of a court of competent jurisdiction *or the county recount board.* When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed 'irregular ballots', and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six (6) months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction *or the county recount board*; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

Machine sealed for 30 days unless opened by order of court or county recount board.

Judges shall return irregular ballots—preserve for six months.

(2) The officers heretofore charged with the duty of furnishing tally sheets and return blanks shall furnish suitable return blanks and certificates to the officers of election. Such return sheets shall have each candidate's name designated by the same reference character that said candidate's name bears on the ballot labels and counters, and shall make provision for writing in of the vote for such candidate in figures and shall also provide for writing in of the vote in words. Such return sheet shall also provide for the return of the vote on questions. It shall also have a blank thereon, on which can be marked the precinct, ward, etc., of which said return sheet bears the returns and the number and make of the machine used. Said return sheet shall also have a certificate thereon, to be executed before the polls open by the judges of election, stating that all counters except the protective counter, if any, and except as otherwise noted thereon, stood at '000' at the beginning of the election, and that all of said counters had been carefully examined before the beginning of the election; that the ballot labels were correctly placed on the machine and correspond to the

Tally sheets and return blanks shall be furnished—provisions.

Certificate by judges of election.



HeinOnline -- 1963 vol. I 70 1963

sample ballot, and such other statements as the particular machine may require; and shall provide for the signature of the election officers. Said return sheet shall also have thereon a second certificate stating the manner of closing the polls, the manner of verifying the returns, that the foregoing returns are correct, giving the indication of the public counter, and poll-list, and protective counter, if any, at the close of the election. Such certificate shall properly specify the procedure of canvassing the vote and locking the machine, etc., for the particular type of machine used, and such certificate shall be such that the election officers can properly subscribe to it as having been followed and shall have provisions for the signature of the election officers. The election officers shall conform their procedure to that specified in the certificate to which they must certify. The certificate and attest of the election officers shall appear on each return sheet."

Second certificate.

Section 17. Section 23-1712, R. C. M. 1947, is amended to read as follows:

Amending clause.

"23-1712. **Filing of ballots and stubs by county clerk.** Upon the receipt of the package or envelopes by the county clerk, he must file the package or envelope containing the ballots voted and detached stubs and the package or envelope containing the unused ballots, and must keep them unopened and unaltered for twelve (12) months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election *or a recount is had as provided by law,* he must burn such packages, or envelopes, without opening or examining their contents."

County clerk must file ballots and stubs for twelve months.

Section 18. Section 23-1807, R. C. M. 1947, is amended to read as follows:

Amending clause.

"23-1807. **Duty of canvassing board.** The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof. If *a* recount shall show that two or more persons *received an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives,* the *county recount* board shall certify such facts to the governor."

Duty of board to declare election.

Recount board shall certify tie vote for state senator or representative.

Approved February 15, 1963.



HeinOnline -- 1963 vol. I 71 1963

## CHAPTER 43

An Act Amending Section 3-1714, R. C. M. 1947, (a) Definition of 'Fertilizer Material'; (f) Provision After Due Public Notice to Change Guarantees From Phosphoric Acid to Phosporus, and From Potash to Potassium, and Guarantees of Other Nutrients; (g) Provisions for Grade to Agree with Guaranteed Analysis; (p) Define Specialty Fertilizer; (g) Define Soil Amendment. Amending Section 3-1715, R. C. M. 1947, Requiring Registration of Soil Amendments, Changing Phosphoric Acid to Phosphorus and Potash to Potassium, Information Required to Register Soil Amendments, Requiring Licensing of Blendors and Mixers of Fertilizer Materials. Amending Section 3-1716, R. C. M. 1947, Providing for Labeling of Soil Amendments. Repealing Section 3-1719, R. C. M. 1947. Minimum Plant Food. Amending Section 3-1723, R. C. M. 1947, Rules and Regulations. Provide Procedures to Adopt Rules and Regulations and Provide for Hearings. Amend Section 3-1724, R. C. M. 1947. Cancellation of Registration. To Designate Hearing Procedure. Effective Date of Amendments, July 1, 1963, Except Date Provided for Change in Guaranteed Analysis.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 3-1714, R. C. M. 1947, is amended to read as follows:

Definitions. "Fertilizer materials".

"3-1714. (a) The term 'fertilizer materials' means any substance containing nitrogen *phosphorus, potassium,* or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

"Mixed fertilizers".

(b) The term 'mixed fertilizers' means any physical combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

"Commercial fertilizer".

(c) 'Commercial fertilizer' includes mixed fertilizer and/or fertilizer materials.

"Bulk fertilizer".

(d) The term 'bulk fertilizer' means commercial fertilizer distributed in nonpackaged form.



HeinOnline -- 1963 vol. I 72 1963

(e) 'Brand' means a term, design, or trade mark used in connection with one or several grades of commercial fertilizer. "Brand".

(f) Guaranteed analysis:

(1) *Until July 1, 1964, and thereafter until the commissioner prescribes the alternative form of 'guaranteed analysis' in accordance with the provisions of subparagraph (2) hereof.* The term 'guaranteed analysis' shall mean the minimum percentage of plant nutrients claimed in the following order and form: Until July 1, 1964. "Guaranteed analysis".

a. Total Nitrogen (N) ..... per cent
Available Phosphoric Acid ($P_2O_5$) ..... per cent
Soluble Potash ($K_2O$) ..... per cent Nitrogen phosphorus potassium.

b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

c. *Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by Sec. 3-1718 (b) of this act.* Commissioner may regulate guaranties for other plant nutrients labeling. Subject to inspection and analysis.

*D.* Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred pounds per ton may be shown. Calcium equivalent.

*(2) At any time after July 1, 1964, that the commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements* After July 1, 1964, Commissioner after public notice and hearing may require "guaranteed analysis"—form.



HeinOnline -- 1963 vol. I 73 1963

*among the states, he may require by regulation thereafter the 'guaranteed analysis' shall be in the following form:*

*Total Nitrogen (N) ..... per cent*

*Available Phosphorus (P) ..... per cent*

*Soluble Potassium (K) ..... per cent*

Effective date of regulation six months limitation. Equivalent showing for two years.

*provided, however, that the effective date of said regulation shall not be less than six (6) months following the issuance thereof, and provided, further, that for a period of two (2) years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.*

Analysis shall constitute grade.

"Grade". (g) The term, 'grade' means the percentages of total nitrogen, available *phosphorus or* phosphoric acid, and *soluble potassium or* soluble potash stated in whole numbers in the same terms, order and percentages as in the 'guaranteeed analysis'.

"Official sample". (h) 'Official sample' means any sample of commercial fertilizer taken by the chemist of the agricultural experiment station of Montana state college or his deputy.

"Ton". (i) 'Ton' means a net weight of two thousand (2,000) pounds avoirdupois.

"Per cent". "Percentage". (j) 'Per cent' or 'percentage' means the percentage by weight.

"Person". (k) 'Person' includes individual, partnership, association, firm, and corporation.

"Distribute". (l) The term 'distribute' means to offer for sale, sell, barter, or otherwise supply commercial fertilizers. The term 'distributor' means any person who distributes.

Singular and plural. (m) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

"Registrant". (n) The term 'registrant' means the person who registers commercial fertilizer under the provisions of this act.



HeinOnline -- 1963 vol. I 74 1963

"Manipulated manures".

(o) 'Manipulated manures' means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means."

Specialty fertilizer.

*(p) A specialty fertilizer is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes.*

"Soil amendment".

*(q) A 'soil amendment' is any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the Federal insecticide, fungicide or rodenticide Act as amended, which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop or soil flora or fauna or other soil characteristics.*

Amending clause.

Section 2. Section 3-1715 R. C. M. 1947, is amended to read as follows:

"3-1715. Registration *and Licenses.*

Brand and grade must be registered.

(a) Each brand and grade of commercial fertilizer *and each 'Soil amendment' shall* be registered before being offered for sale, sold or distributed in this State. The application for registration shall be submitted to the Commissioner on a form furnished by the Commissioner and shall be accompanied by a fee of thirty-five dollars *($35)* per brand and ten dollars *($10)* per grade. Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this Act. Upon approval by the Commissioner, a copy of the registrations shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

Application.

Fees—Fund.

Copy of registrations furnished applicant.

Application shall include brand, grade, guaranteed analysis and sources.

(1) The brand and grade.

(2) The guaranteed analysis.

(3) The sources from which the nitrogen, *phosphorus* and *potassium* are derived.



HeinOnline -- 1963 vol. I 75 1963

Commissioner may require additional information.

(4) The commissioner may require a manufacturer of commercial fertilizer to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.

(5) The name and address of the registrant.

Additional information required for soil amendments.

*(6) For soil amendments, in addition to the information required in paragraphs (1), (2), (3), (4), and (5) of this section, applications for registration must include the name and chemical designation and content of active ingredients.*

(b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.

Uniform content.

(c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration."

Distributor who blends fertilizer to order must apply for license.

*(d) Any distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with part (a) of this section, must first make application to obtain a license from the Commissioner. The application for such a license shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner and shall be accompanied by a fee as herein prescribed which sum shall constitute the license fee in event the license is granted. If said distributor blends or mixes fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, then a license is required for each location and for each such mobile mechanical unit. The license shall be twenty-five dollars ($25) in the case of each location, but in the case of mobile units each such unit owned and operated by any one distributor shall be licensed at a rate of twenty-five dollars ($25) for the first unit, and ten dollars ($10) for each such additional mobile unit. The license shall expire on December 31 of each year.*

License required for each location.

Fees— license expires December 31 of each year.

Fund for administration.

*Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this Act. Each licensee shall furnish the Commissioner with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. Said statement shall cover the semiannual periods ending June 30 and December 31 of each year, and shall be filed with the Commis-*

Licensee shall furnish statement of tonnage used.



HeinOnline -- 1963 vol. I 76 1963

*sioner not later than 30 days (which may be extended on valid reason therefore an additional thirty days, on written requests to the Commissioner) after the close of each semiannual period. In lieu of the guaranteed anlysis, the licensee must furnish to each and every purchaser and consumer in written or printed form, an invoice or delivery ticket showing the net weight and guaranteed anlysis of each and every one of the materials used, which shall accompany delivery.*

Licensee shall furnish invoice showing net weight and guaranteed analysis.

*The distributor shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizers are delivered in the same load, they shall be intimately and unformly mixed unless they are in separate compartments.*

Uniform mixture.

*The Commissioner is authorized and empowered to cancel the license as herein provided upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this section; provided that no license shall be revoked or refused until the licensee shall have been given a hearing by the Commissioner pursuant to Section 3-1723 of this Act.*

Commissioner may cancel license for cause after hearing.

Section 3. Section 3-1716 R. C. M. 1947, is amended to read as follows:

Amending clause.

"3-1716. **Labeling.**

(a) Any commercial fertilizer offered for sale or sold or distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form the net weight and the information required by items 1, 2, and 5 of paragraph (a) section 3-1715 either (1) on tags affixed to the end of the package between the ears and/or the sewed end or (2) directly on the package in which case, for bags containing fifty (50) pounds or more, the grade shall appear also on the end or the side of the package in type that is plainly legible.

Containers must be labeled.

(b) If distributed in bulk, a written or printed statement of the weight and the information required by items 1, 2 and 5 of paragraph (a) of section 3-1715, shall accompany delivery and be supplied to the purchaser."

Statement shall accompany bulk sales.

*(c) Soil amendments shall be labeled in accordance with paragraph (a) of this section or if distributed in bulk, paragraph (b), and in addition shall show the name or chemical designation and content of the active ingredients.*

Soil amendments shall be labeled.



HeinOnline -- 1963 vol. I 77 1963

Repealing clause.

Section 4. Section 3-1719 R. C. M. 1947, is repealed.

Amending clause.

Section 5. Section 3-1723 R. C. M. 1947, is amended to read as follows:

"3-1723. **Rules and Regulations** *and Hearings.*

Commissioner authorized to prescribe rules and regulations after notice by mail and publication—hearing.

*(a)* For the enforcement of this Act, the Commissioner is authorized to prescribe and, after public hearing; *(1) having notified by mail all registrants on file and (2) having advertised once a week for two consecutive weeks in two newspapers of general circulation;* to enforce such rules and regulations relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this Act."

Notice and hearing before denying, cancelling or revoking registration.

*(b) The Commissioner shall, before denying the application for a registration or before canceling or revoking any registration, set the matter down for a hearing, and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person or by an attorney in reference thereto.*

Service of notice.

*The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the Commissioner at such time and place as the Commissioner shall prescribe, and the hearing may be continued from time to time.*

Amending clause.

Section 6. Section 3-1724 R. C. M. 1947 ,is amended to read as follows:

Cancellation on proof of fraudulent practices after hearing.

"3-1724. **Cancellation of Registration.** The Commissioner is authorized and empowered to cancel the registration of any commercial fertilizer or to refuse to register any commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive pracitces in the evasions or attempted evasions of the provisions of this Act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the Commissioner," *as provided in Section 3-1723 of this Act.*

Severability.

Section 7. *Constitutionality. If any clause, sentence, paragraph, or part of this Act shall for any reason be*



HeinOnline -- 1963 vol. I 78 1963

*judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.*

Repealing clause.

Section 8. *Repeal. All laws and parts of laws in conflict with or inconsistent with the provisions of this Act are hereby repealed.*

Effective July 1, 1963.

Section 9. *Effective Date. This Act shall take effect and be in force from and after the first day of July, 1963.*

Approved February 15, 1963.

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## CHAPTER 44

An Act to Amend Section 71-217, Revised Codes of Montana, 1947, Relating to Authority of the State Department of Public Welfare to Reduce the Reimbursements of the County Share of Personnel Costs in Certain Circumstances; and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 71-217 of the Revised Codes of Montana, 1947, be and the same is hereby amended to read as follows:

County board shall appoint staff personnel.

"71-217. **Staff personnel—how selected, paid and controlled—dismissal.** Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dis-

Authority of state department over staff personnel.



HeinOnline -- 1963 vol. I 79 1963

miss any member of the staff personnel for inefficiency, incompetence or similar cause.

County board of public welfare shall reimburse state department one-half.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel, *except that, under circumstances prescribed by the state department of public welfare, the reimbursement by the county board of public welfare may be less than one-half.* All other administrative costs of the county department shall also be paid from county poor funds.

State department may prescribe less than one-half.

State department shall submit claim for reimbursement to county board.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 15, 1963.

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## CHAPTER 45

An Act to Amend Section 5-206, R. C. M. 1947, Relating to the Capital and Surplus of State Banks and the Par Value of the Common Capital Stock of State Banks.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 5-206 R. C. M. 1947, is amended to read as follows:

"5-206. **Amount of capital.** The amount of the com-



HeinOnline -- 1963 vol. I 80 1963

mon and preferred stock of a commercial bank shall not be less than twenty-five thousand dollars ($25,000) and in addition thereto there shall be created a surplus of not less than ten per cent (10%) of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

Commercial bank stock not less than $25,000 and 10% surplus.

Paid up prior to application for certificate of authorization.

That a commercial bank having its place of business in a city or town of more than two thousand (2,000) and less than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than thirty thousand dollars ($30,000), and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than fifty thousand dollars ($50,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided.

Commercial bank—
population 2,000 to 4,000—
stock not less than $30,000 and 10% surplus.

Population over 4,000—
stock not less than $50,000 and 10% surplus.

The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars ($100,000) nor more than ten million dollars ($10,000,000), of which amount at least one hundred thousand dollars ($100,000) must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of one hundred dollars ($100) *or such less amount as may be provided in the articles of incorporation*; provided that this act shall not require any bank in existence and doing business to increase its capital stock."

Savings bank, trust company or investment company—
capital stock $100,000 to $10,000,000.

$100,000 paid up prior to application for certificate of authorization.

Common stock par value $100 or less.

Approved February 15, 1963.



HeinOnline -- 1963 vol. I 81 1963

## CHAPTER 46

An Act Amending Section 23-605, R. C. M. 1947, by Increasing the Maximum Hourly Rate for Election officers from One Dollar ($1.00) to One Dollar Twenty-five Cents ($1.25) Per Hour.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 23-605, R. C. M. 1947, is amended to read as follows:

Minimum pay for election officers— $1.25 per hour.

"23-605. **Compensation of election officers.** The compensation of members of boards of election, including judges and clerk, shall be fixed by the board of county commissioners at not to exceed *one dollar twenty-five cents ($1.25)* per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury."

Approved February 15, 1963.

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## CHAPTER 47

An Act Continuing and Perpetuating the Montana Historical Society and Prescribing the Powers and Duties of the Board of Trustees of the Society; Abolishing the Montana Fine Arts' Commission; and Repealing Sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Montana historical society.

Section 1. The Historical Society of Montana, originally organized under the provisions of an act of the legislative assembly of the Territory of Montana, entitled "An Act to Incorporate The Historical Society of Montana," approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled "An Act Concerning the Historical Society For The State Of Montana And Making An Appropriation Therefor," and by "An Act To Perpetuate The Historical Society Of The State of Montana," approved March 1, 1949, is hereby continued and perpetuated as the "Mon-



HeinOnline -- 1963 vol. I 82 1963

tana Historical Society" and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

Agency of state government.

Section 2. As used in this act,

(1) "Society" means the Montana Historical Society and includes

"Society" defined.

(a) The historical and miscellaneous libraries and their contents;

(b) Any museums and art galleries, and their contents, acquired by the trustees;

(c) Any historical places, sites or monuments acquired or developed by the society;

(d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and

(e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) "Trustees" means the board of trustees of the Montana historical society.

"Trustees".

(3) "Committee" means the executive committee of the board of trustees of the Montana historical society.

"Committee".

Section 3. Any historical library or museum administered by the society in accordance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained or operated by the state of Montana.

Independent.

Section 4. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the Governor, by and with the consent of the Senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three

Board of 15 trustees appointed by governor.

Term of office.



HeinOnline -- 1963 vol. I 83 1963

(3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

Qualifications for trustees.

Section 5. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall insofar as possible, appoint trustees from the various geographical areas of the state.

Trustees may select executive committee of five.

Section 6. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

No salary—mileage.

Section 7. The trustees shall serve without compensation, but may be reimbursed for mileage.

Powers and duties.

Section 8. The powers and duties of the trustees are as follows:

Election of officers.

(1) To elect annually from among their number a president, a vice-president, and a secretary.

By-laws, rules rules and regulations to administer society.

(2) To adopt by-laws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

Appoint director.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

Create memberships.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

Sell and exchange.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

Oversee maintenance.

(6) To see that the collections and properties of the society are maintained in good order and repair.



HeinOnline -- 1963 vol. I 84 1963

Biennial report.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

Accept gifts.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

Collect and display historical material.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the West and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, mineral and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and else-



HeinOnline -- 1963 vol. I 85 1963

where; and to microfilm papers or documents in danger of disappearance or injury.

Director responsible for management.

Section 9. The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

Official seal.

Section 10. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

Maintenance of offices and quarters.

Section 11. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

Society may raise funds.

Section 12. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

Montana fine arts commission abolished.

Section 13. The Montana fine arts' commision is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

Repealing clause.

Section 14. Sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511,



HeinOnline -- 1963 vol. I 86 1963

44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 197, are repealed.

Approved February 15 ,1963.

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## CHAPTER 48

An Act Providing that Boundaries of a Television District Created by Authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; May be Altered and Outlying Areas May be Annexed From Territory Contiguous to an Existing Television District; and Providing the Procedure for Such Annexation.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Boundaries of televivsion district may be altered.

Section 1. The boundaries of a television district created by authority of chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas be annexed from territory contiguous thereto in the following manner;

Petition.

(a) A petition shall be signed by owners of television sets within the proposed area, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets within the area to be annexed;

Designation of boundaries—area to be annexed.

(b) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district;

Hearing and notice.

(c) The petition shall be transmitted to the clerk and recorder and the hearing and notice thereof shall be the same as provided by sections 70-412 through 70-414, R. C. M. 1947;

Resolution by county commissioners.

(d) After the hearing the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

Approved February 21, 1963.

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## CHAPTER 49

An Act to Amend Section 11-2008, Revised Codes of Montana, 1947, Relating to Fire Districts, to Change the



HeinOnline -- 1963 vol. I 87 1963

Requirements for the Petitions Necessary to Create, Dissolve, and Change Boundaries of Fire Districts.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 11-2008, R. C. M. 1947, is amended to read as follows:

"11-2008. **Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.** (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area *of the privately owned lands* included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

Petition for fire district to county commissioners signed by 50% or more of owners of privately owned land.

Notice of hearing posted and published.

Board shall hear and grant petition if sufficient signatures.

Board shall render decision within 30 days.

Board may levy special property tax.

(b) Any fire district organized under this act may



HeinOnline -- 1963 vol. I 88 1963

Fire district may be dissolved on petition signed by 50% or more of owners of privately owned lands.

be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area *of the privately owned lands* included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

Petition for change of boundaries of fire district signed by 20% or more of owners of privately owned lands.

(c) **Change of boundaries—division.** Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, *of the privately owned lands* of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area *of the privately owned lands* included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such 'other assets' and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Pro-

Notice of hearing posted.

Petition shall describe boundaries.

Petition granted unless protested by 50% or more of owners of privately owned lands.

Upon division moneys apportioned.



HeinOnline -- 1963 vol. I 89 1963

vided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

Petition for annexation to fire district signed by 50% or more of owners of privately owned lands.

(d) **Change of boundaries—annexation.** Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more *of the area of privately owned lands* of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above; and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area *of the privately owned lands* included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Notice and hearing.

Annexation unless protested by 50% or more of owners of privately owned lands.

Petition for withdrawal and annexation to another district signed by 50% or more of owners of privately owned lands.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, *of the privately owned lands* of an area, which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area *of the privately owned lands* included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more ad-

Notice and hearing.

Withdrawal and annexation allowed unless protested by 50% or more of owners of privately owned lands.



HeinOnline -- 1963 vol. I 90 1963

vantageous proximity and communications with the fire-fighting facilities of the other district."

Approved February 21, 1963.

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## CHAPTER 50

An Act to Amend Chapter 24, Title 11, Revised Codes of Montana, 1947, by the Addition of Section 11-2414, Providing Regulations Governing the Terms and Conditions of the Refunding of Municipal Water and Sewer Revenue Bonds.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That chapter 24, Title 11, Revised Codes of Montana, 1947, is hereby amended by the addition of a new section entitled "Refunding revenue bonds", to be numbered 11-2414, and to read as follows:

Refunding revenue bonds.

11-2414. **Refunding revenue bonds.** (1) Refunding revenue bonds issued as authorized in sections 11-2403 and 11-2404 shall be governed by all of the provisions of this chapter as fully as bonds issued for the initial financing of any undertaking, and by the further provisions of this section.

Authority to exchange or sell at par value plus accrued interest.

(2) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

Refunding bonds may bear different interest rate if issued to refund matured principal—interest.

(3) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded,



HeinOnline -- 1963 vol. I 91 1963

under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent (3/8 of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

Interest must be at least 3/8 of 1% less than annual rate on bonds refunded.

Refunding bonds issued and sold six months before maturity of bonds refunded—deposit of proceeds in escrow.

(4) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

Appropriation of escrow fund.

Limitations on securities purchased with escrow fund.

Excess revenues—use and deposit.

(5) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing



HeinOnline -- 1963 vol. I 92 1963

such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (4) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

Section 2. This act shall be in full force and effect from and after its passage and approval. Effective immediately.

Approved February 21, 1963.

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## CHAPTER 51

An Act to Amend Section 11-2218, Revised Codes of Montana, 1947, Relating to the Issuance and Sale of Negotiable Revenue Bonds for the Construction, Reconstruction, and Improvement of Municipal Water and Sewer Systems and Additions Thereto, and the Refunding of Such Bonds, to Provide Regulations Governing the Terms and Conditions of Such Refunding.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 11-2218, Revised Codes of Montana, 1947, is amended to read as follows: Amending clause.

"11-2218. **May issue** *revenue* **bonds—sinking fund—** *refunding revenue bonds. (1)* Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not

Municipality may issue and sell revenue bonds when authorized by majority vote for water and sewer systems.

Interest—six per cent limitation.



HeinOnline -- 1963 vol. I 93 1963

Maturity within 40 years.

Sold at par—payable from sinking fund.

more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

City ordinance or resolution authorizing bonds—must create sinking fund.

*(2)* Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, *and* must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

Pledge of system revenue to sinking fund.

*(3)* At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside *to such* sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

Net income and revenues means gross income less expenses.

*(4)* The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

Payments constitute first lien on net income and revenues.

*(5)* Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

Refunding bonds authorized without election.

*(6)* Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds *in the manner provided in this section,* to refund bonds previously issued for any of the foregoing purposes, whether issued



HeinOnline -- 1963 vol. I 94 1963

under authority of this section or any other applicable law. *Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.*

Exchange at par value.

Bonds to refund interest.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors."

Additional bonds for reconstruction and improvement authorized by election.

*(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated*

Refunding bonds may bear different interest rate if issued to refund matured principal—interest.

Interest must be at least 3/8 of 1 % less than annual rate on bonds refunded.



HeinOnline -- 1963 vol. I 95 1963

*maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent (3/8 of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.*

Refunding bonds issued and sold six months before maturity of bonds refunded—deposit of proceeds in escrow.

*(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Rescrve System and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: Banks for Cooperatives, Federal Home Loan Banks, Federal Intemediate Credit Banks, Federal Land Banks, and the Federal National Mortgage Association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.*

Appropriation of escrow fund.

Limitations on securities purchased with escrow fund.

Excess revenues—use and deposit.

*(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.*



HeinOnline -- 1963 vol. I 96 1963

*Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.*

Section 2. This act is effective on its passage and approval. Effective immediately.

Approved February 21, 1963.

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## CHAPTER 52

An Act to Amend Section 11-2404, R. C. M. 1947, to Alter and Reduce the Method and Amount of Advertising Required in the Sale of Bond Issues Amounting to Less Than One Hundred Fifty Thousand Dollars ($150,000).

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 11-2404, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-2404. **Authorization of undertaking—form and contents of bonds.** The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election. Authorization of undertaking. Bonds may be authorized by special election. Refunding revenue bonds authorized without election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semi-annually, may be in one or more series, may bear such date or dates, may mature at such time or Interest—six per cent limitation.



HeinOnline -- 1963 vol. I 97 1963

Maturity within 40 years.

times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, *California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars ($150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over.* Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law.''

Sold at par.

Private sale to U. S.

Public sale—Notice—publication required.

Interim receipts may be issued.

Bonds and interim receipts fully negotiable.

Approved February 21, 1963.

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## CHAPTER 53

An Act to Amend Section 26-301, R. C. M. 1947, by Removing the Prohibition Against Using Salmon Eggs, Salmon Spawn or Imitations as Bait for Fishing.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 26-301, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 98 1963

"26-301. **Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** 1. It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by aid or with the use of any set gun, jacklight, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jacklight or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

Unlawful to hunt from vehicle or using entrapment devices.

Exception—blinds and decoys with shotgun—10 gauge limitation. Unlawful to fish with guns or traps.

2. (a) No game birds or game or furbearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or furbearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory waterfowl, or game or furbearing animals.

Use of aircraft forbidden.

Use of boats for hunting forbidden.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or furbearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

Aircraft spotting and signalling forbidden.

3. No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

Firearm silencer forbidden.

4. No person may use a shotgun to hunt, kill or shot deer except with loads as specified by the commission.

Deer hunting with shotgun forbidden.



HeinOnline -- 1963 vol. I 99 1963

Use of dogs forbidden.

5. No person shall chase with dogs any of the game or furbearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, or other means of taking stock-killing bears except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

Exception, stock-killing bears.

Inspection of bear traps.

Exception, game birds hunted with dogs.

Field trials on written permission.

Commission may designate set lines.

6. The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or non-game fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

Game fish taken by angling.

7. Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of sockeye salmon when the commission shall declare an open season when sockeye salmon may be taken by snagging, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and three (3) feet in width, in such waters as may be designated by the commission.

Snagging season—sockeye salmon net or gaff.

Minnows—use of net.

Commission's orders take effect after notice.

8. Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Violation—misdemeanor.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved February 21, 1963.



HeinOnline -- 1963 vol. I 100 1963

## CHAPTER 54

An Act to Amend Section 11-1919, R. C. M. 1947, Relating to the Manner in Which the State Auditor of the State of Montana Shall Pay to the Fire Department Relief Associations, Legally Organized and Existing in the Several Cities and Towns in the State of Montana, Their Respective Share of the Premium Taxes Collected From Insurers Authorized to do Business in the State of Montana.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 11-1919, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 11-1919. **State auditor to pay fire department relief association premium tax collected from certain insurers.** 1. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon *the fire portion of the direct* premiums *after deducting cancellations and return premiums,* collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on ricks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows: State auditor shall pay to city or town treasurer amount of taxes on fire premiums for use of fire department relief association.

(a) Each and every fire department relief association legally organized and existing in any city or town and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, *the fire portion of the direct* premiums, *after deducting cancellations and return premiums,* assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town. Computation of portion of taxes.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars ($100.00) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by Portion shall not be less than $100.00.



HeinOnline -- 1963 vol. I 101 1963

said fire department relief association equal to the sum of one hundred dollars ($100.00).

Authorized insurance risks.

2. The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

Approved February 21, 1963.

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## CHAPTER 55

An Act to Amend Section 1, Chapter 267 of the Laws of the Thirty-fourth Legislative Assembly, 1955, as Amended by Section 1, Chapter 16 of the Laws of the Thirty-fifth Legislative Assembly, 1957, and by Section 2, Chapter 36 of the Laws of the Thirty-sixth Legislative Assembly, 1959, Compiled as Section 26-202.1, R. C. M. 1947, Relating to Fish and Game Licenses, Fees, Classification of Licenses, Fees and Powers Under Licenses, to Provide That Holders of Class A-1 Resident Big Game Licenses Who Apply for Special Licenses for Moose, Mountain Goat, Mountain Sheep, Bison or Buffalo Shall be Given Preference Over Applicants Who Hold a Class B-2 Nonresident Big Game License.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 1, chapter 267, laws of the thirty-fourth legislative assembly, 1955, as amended by section 1, chapter 16, laws of the thirty-fifth legislative assembly, 1957, and by section 2, chapter 36, laws of the thirty-sixth legislative assembly, 1959, compiled as section 26-



HeinOnline -- 1963 vol. I 102 1963

202.1, of the Revised Codes of Montana, 1947, is amended to read as follows:

"26-202.1. **Licenses—fees—classification of licenses—fees and powers under licenses.**

Class A license fee.

(1) **Class A License.** Resident Game Bird and Fishing License. Upon payment of a fee of three dollars ($3.00) the applicant who qualifies therefor shall receive a Class A license which shall entitle the holder thereof to pursue, hunt, shoot and kill game birds and possess dead bodies of game birds, and to fish with hook and line or rod as authorized by regulations of the commission.

Resident—game bird hunting and fishing.

Class A-1 license.

(2) **Class A-1 License. Resident Big Game License.** Except as herein provided, any holder of a Class A license, who is twelve (12) years of age or older, may, upon payment of an additional sum of three dollars ($3.00), be entitled to a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game animals and possess the carcass of game animals of the state which are authorized by the commission to be pursued, hunted, shot, killed, taken or possessed.

Fee. Resident—big game hunting.

Proof required of residents under 18 years of age.

(a) On and after January 1, 1958, no big game hunting license shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license either: (1) evidence that he has held a hunting license issued by this state in a prior year, or (2) a certificate of competency as provided by this section; providing further that all resident persons under fifteen (15) years of age must present a certificate of competency even if he has held a hunting license in prior years.

Fish and game department shall provide course of instruction—handling of firearms.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person, found by it to be competent, to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed, a certificate of competency in the safe handling of firearms.

Certificate of competency.

Class A-2 license.

(3) **Class A-2 License—Special Bow and Arrow License.** To Pursue, Hunt, Shoot, Kill, Take and Possess Deer, Antelope and Elk. Any holder of a Class A-1 license may, upon payment of an additional sum of two



HeinOnline -- 1963 vol. I 103 1963

Fee.

dollars ($2.00) to any agent of the fish and game commission, authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, and in special areas, as same may be designated by the fish and game commission.

Resident—bow and arrow.

Class B license—non-resident, limited residence—fishing.

(4) **Class B License—Nonresident, or a Person Having Less Than Six (6) Months Residence in the State.** Any non-resident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars ($10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

Fee.

Class B-1 license—non-resident, limited residence—game birds.

(5) **Class B-1 License—Nonresident and Persons Having Less Than Six (6) Months Residence in the State.** Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars ($25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

Fee.

Class B-2 license—non-resident, limited residence—big game.

(6) **Class B-2 License—Nonresident or Persons Having Less Than Six (6) Months Residence in the State.** Big Game License. Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars ($100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

Fee.

Class B-3 license—temporary non-resident or tourist—fishing.

(7) **Class B-3 License—Temporary Nonresident or Tourist License.** Any nonresident of the state of Montana, upon payment of the sum of three dollars ($3.00) to any agent of the fish and game commission author-

Fee.



HeinOnline -- 1963 vol. I 104 1963

ized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

Special licenses.

(8) **Special Licenses.** Any applicant who is the holder of a Class A-1 resident big game license or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which, in the judgment of the fish and game commission is to be issued and shall pay the following fees therefor:

Fees.

Moose, twenty-five dollars ($25.00).

Mountain Goat, five dollars ($5.00).

Mountain Sheep, fifteen dollars ($15.00).

Bison or Buffalo, twenty-five dollars ($25.00).

Limitation on number of class B-2 licenses.

*In the event that the number of applications received from holders of Class A-1 resident big game licenses and Class B-2 nonresident big game licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.*

Class C license—trappers.

Fee.

(9) **Class C License—Trapper's License.** Any holder of a Class A license, upon making application and paying the sum of ten dollars ($10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, except beaver, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

Class C-1 license—land owner trappers.

Fee.

(10) **Class C-1 License—Land Owner's Trapper's License.** Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations



HeinOnline -- 1963 vol. I 105 1963

of the fish and game commission and at such places as may be designated in said licenses.

No license required—residents 70 years of age.

(11) **Exception.** Any person a resident of the state of Montana as defined in section 26-202.3 of the Revised Codes of Montana, 1947, subsection 2, chapter 267, laws of Montana, 1955, who has attained the age of seventy (70) years shall be entitled to fish and hunt game birds without a Class A license, provided that said persons carry proof of age in lieu of the Class A license described in the foregoing subsection (1), and provided that for persons convicted of any violation of the fish and game laws or regulations of the state of Montana, the privilege conferred by this subsection shall be revoked for a period of not less than six (6) months."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 21, 1963.

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## CHAPTER 56

An Act to Amend Sections 11-1925, 11-1926 and 11-1927, R. C. M. 1947, Relating to Service Pensions, Disability Pensions and Pensions to Widows and Orphans of Firemen, and the Increase Thereof.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Amending clause.

Section 1. Section 11-1925, R. C. M. 1947, is amended to read as follows:

Pensions to retired firemen.

"11-1925. **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its

20 years service.

members who elect to retire from active service after having completed twenty (20) years or more of active

50 years of age.

duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's 'disability and pension fund', a 'service pension' in an amount which shall be equal to one-half

Amount of pension.

(½) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. Provided, such association may



HeinOnline -- 1963 vol. I 106 1963

at any time, by a two-thirds (2/3) vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; provided, that no increase shall be effected as will increase the said 'service pension' to an amount in excess of a sum equal to one-half (½) of the monthly active duty compensation last received by the member; provided, further, that no decrease shall be effected unless the balance in the 'disability and pension fund' is less than one-half (½) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality. *However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department.* In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars ($75.00) per month.

Change of pension—two-thirds vote.

Increase limited.

Decrease limited.

Effective July 1, 1963.

Election to serve additional time—increased pension.

Volunteer firemen—limited pension.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such a fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act."

Volunteer firemen—20 years service—entitled to benefits.

Section 2. Section 11-1926, R. C. M. 1947, is amended to read as follows:

Amending clause.

"11-1926. **Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a 'disability pension', out of any moneys in the association's 'disability and pension fund', to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half (½) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. Provided, such association may at any time, by two-thirds (2/3) vote of the members thereof,

Disability pension.

Line of duty.

Amount.

Change of disability pension—two-thirds vote.



HeinOnline -- 1963 vol. I 107 1963

increase or decrease the said 'disability pension' whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; provided further, that no increase shall be effected as will increase the said 'disability pension' to an amount in excess of a sum equal to one-half (½) of the monthly salary last received by the member; provided, further, that no decrease shall be effected unless the balance in the 'disability and pension fund' is less than one-half (½) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality. *However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department.* In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five ($75.00) dollars per month."

Increase limited.

Decrease limited.

Effective July 1, 1963.
Election to serve additional time—increased pension.

Volunteer firemen—limited pension.

Amending clause.

Section 3. Section 11-1927, R. C. M. 1947, is amended to read as follows:

Pension to widows and orphans of deceased firemen.

"11-1927. **Pensions to widows and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a 'service pension' as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury in line of duty, and was receiving or was qualified to receive a 'disability pension', as provided by section 11-1926, out of any money in the relief association's 'disability and pension fund', a monthly pension in an amount which shall be equal to one-half (½) of the monthy compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. Provided, such association

Amount.



HeinOnline -- 1963 vol. I 108 1963

may at any time, by a two-thirds (2/3) vote of the members thereof, increase or decrease the said pension whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; provided, that no increase shall be effected as will increase the said pension in an amount in excess of a sum equal to one-half (½) of the monthly compensation last received by the deceased member; provided, further, that no decrease shall be effected unless the balance in the 'disability and pension fund' is less than one-half (½) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality. *However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department.* Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a 'service pension' as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a 'disability pension' as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five ($75.00) dollars per month."

Change of pension—two-thirds vote.

Increase limited.

Decrease limited.

Effective July 1, 1963. Election to serve additional time—increased pension.

Pension to widow ceases on remarriage—no pension to to widow where married after fireman retired.

Pension to orphans ceases at age 18.

Volunteer firemen pension limited.

Section 4. If any clause, sentence, section, paragraph, or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in

Separability clause.



HeinOnline -- 1963 vol. I 109 1963

its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid and inoperative.

Approved February 21, 1963.

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## CHAPTER 57

An Act to Amend Section 23-1611, R. C. M. 1947, Relating to Voting Machines; Providing That the Period of Time During Which a Voting Machine Must Remain Sealed and Locked After an Election Shall be Reduced From Thirty (30) Days to Five (5) Days When a Machine is Used in Any Municipal Primary Nominating Election; Providing for an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 23-1611, R. C. M. 1947, be and the same is hereby amended to read as follows:

Judges shall place voting machine in public view for one hour.

"23-1611. **Election returns.** (1) The judges, as soon as the count is completed and fully ascertained, shall place the machine for one (1) hour in such a position that the registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Im-

Machine sealed and locked for thirty days—

mediately after the above said one (1) hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty (30) days, *except when used in a municipal primary nominating election,* unless opened by order of

Exception—municipal primary—five days.

a court of competent jurisdiction. *Whenever a machine has been used in a municipal primary nominating election, it shall remain sealed and locked for a period of at least (5) days, unless opened by order of a court of competent jurisdiction.* When irregular ballots have been voted, the

Judges shall seal and return 'irregular ballots'.

judges shall return them in a properly sealed package endorsed 'irregular ballots,' and indicating the precinct and county and file such package with the city or county

Destroyed after six months.

clerk. It shall be preserved for six (6) months after such election and may be opened and its contents ex-



HeinOnline -- 1963 vol. I 110 1963

amined only upon an order of a court of competent jurisdiction; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

Return sheets shall be furnished.

(2) The officers heretofore charged with the duty of furnishing tally sheets and return blanks shall furnish suitable return blanks and certificates to the officers of election. Such return sheets shall have each candidate's name designated by the same reference character that said candidate's name bears on the ballot labels and counters, and shall make provision for writing in of the vote for such candidate in figures and shall also provide for writing in of the vote in words. Such return sheet shall also provide for the return of the vote on questions. It shall also have a blank thereon, on which can be marked the precinct, ward, etc., of which said return sheet bears the returns and the number and make of the machine used. Said return sheet shall also have a certificate thereon, to be executed before the polls open by the judges of election, stating that all counters except the protective counter, if any, and except as otherwise noted thereon, stood at '000' at the beginning of the election, and that all of said counters had been carefully examined before the beginning of the election; that the ballot labels were correctly placed on the machine and correspond to the sample ballot, and such other statements as the particular machine may require; and shall provide for the signature of the election officers. Said return sheet shall also have thereon a second certificate stating the manner of closing the polls, the manner of verifying the returns, that the foregoing returns are correct, giving the indication of the public counter, and poll-list, and protective counter, if any, at the close of the election. Such certificate shall properly specify the procedure of canvassing the vote and locking the machine, etc., for the particular type of machine used, and such certificate shall be such that the election officers can properly subscribe to it as having been followed and shall have provisions for the signature of the election officers. The election officers shall conform their procedure to that specified in the certificate to which they must certify. The certificate and attest of the election officers shall appear on each return sheet."

Certificate executed by judges.

Second certificate.



HeinOnline -- 1963 vol. I 111 1963

Effective immediately.

Section 2. This act shall be in full force and effect from and after its passage and approval.

Approved February 21, 1963.

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## CHAPTER 58

An Act Exempting Benefits Received Under the Federal Employees Retirement Act Up to Thirty-six Hundred Dollars ($3,600) From Montana State Income Tax.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 84-4905, R. C. M. 1947, is amended to read as follows:

Taxpayer's adjusted gross income defined.

"84-4905. **Adjusted gross income.** Adjusted gross income shall be the taxpayer's adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section shall be labeled and amended and in addition includes interest on all state, county, and municipal bonds, but does not include the following which are exempt from taxation under this act:

Exemptions.

Interest

(a) Interest on United States obligations.

Dividends.

(b) Dividends received from stock held in national banks when such banks have their situs in Montana."

Benefits.

*(c) All benefits received under the federal employees retirement act not in excess of thirty-six hundred dollars ($3,600).*

Approved February 21, 1963.

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## CHAPTER 59

An Act Requiring a Corporation to Obtain a Tax Clearance Certificate From the State Board of Equalization Before Dissolution is Allowed and Providing That This Act Shall be Codified as Section 15-1119, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. **Tax clearance certificate.** No decree of dissolution shall be made and entered by any court, nor



HeinOnline -- 1963 vol. I 112 1963

shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any taxpayer is terminated, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the taxpayer obtains from the state board of equalization and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state board of equalization is satisfied from the available evidence that all taxes imposed by title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the taxpayer or any individual, bank or corporation from liability for any taxes, penalties, or interest due the state of Montana.

Tax clearance certificate required on dissolution or withdrawal of corporation.

Section 2. This act shall be codified as section 15-1119, R. C. M. 1947.

Section 15-1119, R.C.M. 1947.

Section 3. This act is effective on its passage and approval.

Effective immediately.

Approved February 21, 1963.

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## CHAPTER 60

An Act to Amend Section 84-1511, R. C. M. 1947, Providing That a Dissolving Corporation Pay the Corporation License Tax Determined on the Basis of its Net Income for the Final Period in Which It Did Business and Deleting the Amount of Three Per Cent (3%) Providing That Corporations Taxes Cannot be Shifted From the Corporation to the Stockholders Unless the Stockholders Agree to Assume Personal Liability for Such Taxes.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 84-1511, R. C. M. 1947, is amended to read as follows:

Amending clause.

"84-1511. **Return and payment of tax by corporations on dissolution or cessation of business—declaration of**

Corporation shall pay excise tax.



HeinOnline -- 1963 vol. I 113 1963

**policy.** (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

No remission for last year of doing business.

Corporation shall pay tax before dissolution or cessation of business.

Determined on net income.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year, shall, before such dissolution or cessation of business, make a return and pay *the* corporation license tax *determined on the basis of its net income for the final period in which it did business in this state at the rate provided in section 84-1501,* in addition to all other corporation license taxes for which such corporation may then be liable."

No shifting of tax unless shareholders assume liability.

Section 2. In the case of corporation dissolution no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders, unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

Effective years.

Section 3. This act shall be in effect for taxable years ending on or after December 31, 1962.

Approved February 21, 1963.

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## CHAPTER 61

An Act to Amend Section 75-2212, R. C. M. 1947, by Changing the Date of Arbor Day, and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-2212, R. C. M. 1947, is hereby amended to read as follows:



HeinOnline -- 1963 vol. I 114 1963

"75-2212. **Arbor day—date of.** The *last Friday of April* in each year shall be known throughout the state of Montana as Arbor day."

Last Friday of April—Arbor Day.

Section 2. This act shall be effective immediately upon its passage and approval.

Effective immediately.

Approved February 21. 1963.

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## CHAPTER 62

An Act Authorizing the Creation of a Rural Improvement District Including Areas in More Than One (1) County; Providing the Procedure of Administration Therefor; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. A rural improvement district, as authorized by sections 16-1601 (1) and 16-1601 (2), may include a part or all of any county or may include areas in more than one (1) county.

Rural improvement district—area.

Section 2. If a rural improvement district includes areas in more than one (1) county, the board of county commissioners of each county in which any portion of the district is situated shall, upon the creation of such district, and at a joint session, appoint a board of three (3) trustees to administer the affairs of the district.

More than one county—appointment—board of trustees.

Section 3. The trustees so appointed upon the creation of such district shall serve staggered terms of one (1), two (2), and three (3) years. At least one (1) trustee shall be appointed from each county within the district. The trustees so appointed shall hold office for the term of their respective appointment or until their successor is appointed and qualified. At the end of the respective terms of said trustees, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in case of a vacancy by death, resignation, removal from the district or otherwise a trustee shall be appointed by the board of county commissioners to fill such vacancy.

Term of office.

One trustee from each county.

Vacancy.

Section 4. The board of trustees of a rural improvement district shall have all the powers and duties with

Trustees—powers and duties.



HeinOnline -- 1963 vol. I 115 1963

respect to such district as the board of county commissioners has with respect to a district including the area of only one (1) county.

Effective immediately.

Section 5. This act is effective on its passage and approval.

Approved February 21, 1963.

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## CHAPTER 63

An Act Validating Certain Instruments Affecting Real Property and Which Were Erroneously Executed or Acknowledged, Notice Imparted by Recording Thereof, and Providing That Duly Certified Copies Thereof May be Read in Evidence, With Like Effect as Copies of an Instrument Duly Executed, Acknowledged and Recorded.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Validation of recorded instruments affecting real property.

Section 1. Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after the date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of any instrument duly acknowledged and recorded.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 21, 1963.



HeinOnline -- 1963 vol. I 116 1963

## CHAPTER 64

An Act to Amend Sections 84-1802, 84-1818, and 84-1819, R. C. M. 1947, Relating to the Gasoline Dealers' License Tax; Providing That All Gasoline Sold or Delivered by any Dealer to any County, Incorporated City or Town or School District of This State Shall be Exempt From Said Tax; Providing a Procedure for Issuance and Use of Governmental Gasoline Tax Exemption Certificates and Permits.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 84-1802, R. C. M. 1947, is amended to read as follows: Amending clause.

"84-1802. **Dealers' statements—amount of tax—gasoline tax exemption certificates.** (1) Each dealer shall, not later than the twenty-fifth (25th) day of each calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed and sworn to, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of a license tax, in an amount equal to the lawful tax per gallon imposed by section *1,* of Chapter *230,* the Laws of *1957,* and acts amendatory, or such other lawful tax as may be imposed by law for each gallon of gasoline so handled, and upon which such license tax was not paid by any other dealer in this state, for engaging in and carrying on such business in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. *The dealer may also deduct for each gallon of gasoline sold by him to any county, incorporated city or town, or school district of this state and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon.* In addition, a dealer may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid aviation gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aviation fund by section 1-501.

Dealer shall furnish monthly statement of gasoline.

Payment of tax.

2% allowed for loss.

Exemption certificate.

Deduction for aviation gasoline.



HeinOnline -- 1963 vol. I 117 1963

Any dealer engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one statement.

County, city, town, school district may apply for permit to issue exemption certificates.

(2) *Any county, incorporated city or town, or any school district of this state may apply to the state board of equalization for a permit to issue governmental gasoline tax exemption certificates. The application for a permit, the permit itself, and any governmental exemption certificates issued pursuant thereto shall be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee not to exceed five dollars ($5.00) for each permit issued, and may provide that such permit shall be valid for a period not exceeding five (5) years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto and any false statement made by the holder in connection therewith.*

Fee.

Subject to revocation.

Permit holder may purchase gasoline free of tax upon giving exemption certificate to seller.

*So long as any governmental permit remains unrevoked, the holder thereof shall have the privilege to purchase gasoline from any seller without the payment of any part of the license tax, imposed by Section 1, Chapter 230, Laws of 1957, or any acts amendatory thereof, upon surrendering to the seller a governmental gasoline tax exemption certificate certifying that the gasoline is purchased for use directly by the governmental subdivision and not for resale. Any seller who sells gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering the sale, or who sells to another seller who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax on the number of gallons covered by such certificates.*

Seller not liable for tax.

Subdivisions of state bound by acts of officers and agents.

*All of the subdivisions of the state of Montana mentioned herein shall be subject to all the conditions, rules and regulations applicable to individuals, and as such subdivisions, can act only by their officer and agents in making application for permits and in issuing governmental gasoline tax exemption certificates, and they shall be responsible for and bound by the acts and declarations of such officers and agents.*

*(3)* Any dealer at an established airport, who pur-



HeinOnline -- 1963 vol. I 118 1963

chases aviation gasoline for resale directly to consumers using such gasoline in aircraft, or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed $5.00 for each permit issued and may provide that said permits shall be valid for a period not exceeding five years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

Dealer or consumer of aviation gasoline may secure permit.

Fee.

Subject to revocation.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state aviation fund, upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a dealer other than at an established airport and the purchase is 50 gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any dealer who sells aviation gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state aviation fund; but notwithstanding any other provision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any dealer to the deduction authorized in subsection (1) of this section unless submitted to the board prior to the end of the

Permit holder may purchase aviation gasoline free of tax upon giving exemption certificate—except tax allocated to state aviation fund.

Seller not liable for tax.

Time limit—submission of certificate.



HeinOnline -- 1963 vol. I 119 1963

second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued."

Record of gasoline purchase shall be kept.

Section 2. Each county, incorporated city or town, or school district of this state which is the holder of a permit to issue governmental gasoline tax exemption certificates, shall keep a record in such form as the state board of equalization shall require, showing the total number of gallons of gasoline purchased by the permit holder and such other information as the state board of equalization may require.

Amending clause.

Section 3. Section 84-1818, R. C. M. 1947, is amended to read as follows:

Procedure for refund of tax paid.

"84-1818. **Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, motor boats, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be *exempt from the payment* of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town *and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization:* provided, that such

Counties, cities, towns, school districts—exempt from payment.

Must furnish exemption certificate.



HeinOnline -- 1963 vol. I 120 1963

Refund shall not exceed total tax.

refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

Written statement— Invoices.

Application for refund— Time limitation.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within eight (8) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board and the state board of examiners, the state auditor shall draw his warrant upon the state treasurer for the amount of such claim and same shall be paid out of the gasoline license tax drawback fund in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

Paid by warrant.

Board may correct statement in absence of fraud.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, after approval by the state board of examiners, as above provided, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein

Board may reject fraudulent claim.



HeinOnline -- 1963 vol. I 121 1963

by invoice of invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is wilfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

Permit for refund claimant.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such forms as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

Board shall keep record of permits.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

Fee.

A fee of one dollar ($1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

Renewal every five years.

Board may suspend permit.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

Seller shall deliver invoice to purchaser.

*(7)* When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in



HeinOnline -- 1963 vol. I 122 1963

words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

Proof of claim.

Proof—lost invoice.

Seller shall retain duplicate invoice for one year.

*(8)* Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefor to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number and the date of issuance. It shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollar ($1.00). Such permit must be renewed annually on or before the first day of January, 1956, and each year thereafter, upon such application and fee paid. After the effective date of this act, it shall

Seller shall obtain permit.

Board shall keep record of permits.

Fee.

Renewal each year.



HeinOnline -- 1963 vol. I 123 1963

Unlawful to sell without permit. Penalty.

be unlawful for any person, firm, corporation or association to sell such gasoline upon which a refund may be claimed without a valid permit therefor. If any such person, firm, corporation or association shall sell any such gasoline without being the holder of a valid permit therefor, he shall be punished by a fine of not less than twenty-five dollars ($25.00), or more than two hundred dollars ($200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment."

Amending clause.

Section 4. Section 84-1819, R. C. M. 1947, is amended to read as follows:

Penalty for false statements.

"84-1819. **Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates.** Any person

Application for refund.

(a) who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him, or to any other person, any such refund without being entitled to the same under the provisions of this act, or

Government gasoline.

*(b) who shall make any false statement in any application for a permit to issue governmental gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any gasoline for which such a certificate has been issued otherwise than for the purposes and business of said governmental subdivision, or who shall collect any part of the tax in connection with a sale covered by a valid certificate, or*

Aviation gasoline.

*(c)* who shall make any false statement in any application for a permit to issue aviation gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any aviation gasoline for which such a certificate has been issued otherwise than in aircraft, or who shall collect that part of the tax, not allocated to the state aviation fund, in connection with a sale covered by a valid certificate shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment."



HeinOnline -- 1963 vol. I 124 1963

Section 5. If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not effect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative. Severability.

Approved February 23, 1963.

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## CHAPTER 65

An Act to Amend Section 2, Chapter 267, Laws of the Thirty-fourth Legislative Assembly, 1955, Compiled as Section 26-202.2, R. C. M. 1947, Relating to Special Fish and Game Licenses and the Tagging of the Carcasses of Game Animals, by Providing a Lesser Period Within Which Persons Who Have Obtained a Special License May Again Make Application for Such a License, and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 2, chapter 267, of the laws of the thirty-fourth legislative assembly, 1955, compiled as section 26-202.2, Revised Codes of Montana, 1947, is amended to read as follows: Amending clause.

"26-202.2. **Special licenses—tagging of carcasses of of game animals.** (1) Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the application prior to the time of filing of application for a special license. Special licenses to big game license holders.

(2) Any person who has obtained a moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding *seven (7)* years, *if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a moose, mountain sheep, bison or buffalo license but did not kill or take an* Eligibility.



HeinOnline -- 1963 vol. I 125 1963

*animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the fish and game commission before or at the time application is made.* It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer or antelope, during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

Tags must be attached to carcass by license holder.

(3) **Tagging of Carcasses of Game Animals.** Every license issued by the fish and game commission authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall have attached thereto, certain tags, coupons, or markers, the form of which shall be prescribed by the state fish and game commission, and when any person should take or kill any deer, elk, moose or antelope under such license, such person shall immediately thereafter attach to said animal or animals the proper tag, coupon or other marker, completely filled out with the name of the license holder, address, date the animal was killed, place the animal was killed, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed. Such tag, coupon or other marker shall be valid only when attached to said license or when such tag, coupon or other marker has been completely filled out and attached to a legally taken game animal, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported, provided the necessary permit to transport the same accompanies the shipment.

Penalty—failure to tag.

Any person who should kill any deer, elk, moose or ante-



HeinOnline -- 1963 vol. I 126 1963

lope by authority of any license issued for the killing of such game animal, and shall fail or neglect to fill out and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said deer, elk, moose or antelope or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said deer, elk, moose or antelope or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Approved February 25, 1963.

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## CHAPTER 66

An Act to Amend Sections 84-1831 and 84-1832, R. C. M. 1947, Relating to the Tax on Special Fuels; Providing That the Various Counties, Incorporated Cities and Towns and School Districts of This State Shall be Exempt From the Levy and Imposition of Said Tax; Providing for an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section. 1. That section 84-1831, R. C. M. 1947, be, and the same is hereby amended to read as follows: Amending clause.

"84-1831. **Definitions.** As used in this act, the following definitions shall apply: Definitions.

(a) 'Person' means and includes any person, firm, association, joint stock company, syndicate, copartnership, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, as applied to a firm, association, syndicate, or copartnership, means and includes the partners or members thereof, and as implied to joint stock companies and corporations, the officers thereof. "Person".

(b) 'Board' means the state board of equalization of the state of Montana. "Board".



HeinOnline -- 1963 vol. I 127 1963

"Public roads and highways of this state".

(c) As used in this act, 'public roads and highways,' and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

"Motor vehicle".

(d) 'Motor vehicle' means any vehicle which is self-propelled upon the highways.

"Special fuel".

(e) 'Special fuel' means and includes all combustible gases and liquids, including liquid petroleum gases, suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor fuel as defined in section 84-1801 (1) (a).

"Use".

(f) 'Use' means either the receipt, delivery or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him, while such vehicle is within this state, or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state.

"Special fuel dealer".

(g) 'Special fuel dealer' means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him. For this purpose the term 'fuel supply tank or tanks' does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

"Special fuel user".

(h) 'Special fuel user' means any person *other than a county, incorporated city or town or school district of this state,* who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

"Bond".

(i) 'Bond' means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special



HeinOnline -- 1963 vol. I 128 1963

fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the board may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the board.

Amending clause.

Section 2. That section 84-1832, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Tax imposed on use of special fuel.

"84-1832. **Tax imposed.** There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1813, or on liquid petroleum gases under section 84-1802. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the board as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the board by the special fuel user as hereinafter provided. *The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.*"

Counties, cities, towns, school districts exempt.

Effective immediately.

Section 3. This act shall be effective immediately upon its passage and approval.

Approved February 25, 1963.

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## CHAPTER 67

An Act to Amend Section 79-1202, Revised Codes of Montana, 1947, as Amended by Chapter 173, Laws of Montana, 1959, Relating to Investment of Funds of the State of Montana, and Altering the Types of Securities in Which the Long Term Investment Fund May be



HeinOnline -- 1963 vol. I 129 1963

Invested; Repealing all Acts and Parts of Acts in Conflict Herewith; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 79-1202, Revised Codes of Montana, 1947, as amended by chapter 173, laws of Montana, 1959, be, and is hereby amended to read as follows:

Authorization to invest in Montana trust and legacy fund.

School permanent fund.

Land grant funds.

Escheated estates funds.

Gift funds.

Other funds.

Investment.

"79-1202. **Funds to be invested according to unified plan.** 1. The state board of land commissioners is hereby authorized and required to invest as part of the Montana trust and legacy fund the following: The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions of learning, subject to investment; the escheated estates funds, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long term investment not legally in the custody of any lawfully constituted board or the investment of which has not been designated by statute. Moneys in the Montana trust and legacy fund shall be invested subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008 inclusive.

Authorization to invest in long term fund—

Patrolmen's retirement fund, Public employees retirement fund, Industrial accident fund.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: That part of the Montana highway patrolmen's retirement fund in excess of twenty-five thousand dollars ($25,000); the public employees' retirement fund; the industrial accident reserve fund; all funds subject to investment as designated by the



HeinOnline -- 1963 vol. I 130 1963

teachers' retirement board; that part of the fish and game fund designated as available by the Montana fish and game commission and all other funds designated by statute. Moneys in the long term investment fund may be invested as follows:

Teachers retirement fund.
Fish and Game fund.
Other funds.
Authorized investment.

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

Securities.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings; in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, *the retirement fund,* or upon the bridge fund of the several counties *and school districts* of the state of Montana; the purchase of all such investments to be subject to the discretion of the board.

Bonds.

(c) In *the obligations, and/or stock where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government:*

United States agencies.

*(1) Commodity credit corporation.*

*(2) Federal intermediate credit banks.*

*(3) Federal land banks.*

*(4) Central bank for co-operatives.*

*(5) Federal home loan banks, and stock thereof.*

*(6) Federal national mortgage association, and stock thereof when acquired in connection with sale of mortgage loans to such association.*



HeinOnline -- 1963 vol. I 131 1963

First mortgages.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United States government or any agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages.

Public utilities.

*(e) In first mortgage bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes and other evidences of indebtedness are, at the time of such investment, within the three (3) highest quality grades for the rating of such bonds, debentures, notes and other evidences of indebtedness by any nationally recognized investment rating agency.*

Transportation equipment.

*(f) In equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment, and which obligations or certificates are, at the time of such investment, within the three (3) highest quality grades for the rating of such obligations or certificates by any nationally recognized investment rating agency.*

Separation of funds.

*All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.*

Authorization to invest in short term investment fund.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in any state bond sinking and interest fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds out-



HeinOnline -- 1963 vol. I 132 1963

standing because of the same not being redeemable under the option provisions contained therein; any educational bond interest and sinking fund; any of the Montana highway patrolmen's retirement fund less than twenty-five thousand dollars ($25,000) as directed by the Montana highway patrolmen's retirement board and any other fund designated by statute to be so invested or any fund in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which fund is requested by the officer, or officers or governing body and which fund is subject to investment. The funds in the short term investment fund may be invested as follows:

Authorized investments—short term fund.

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

(b) Any sinking and interest fund and any other funds may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in any sinking and interest fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for the payment of principal and interest of the obligations for which the sinking and interest fund was created.

All securities purchased and all cash on hand for each fund shall be kept separate in the short term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

Authorization to employ expert.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there



HeinOnline -- 1963 vol. I 133 1963

shall not be paid for such services an amount in excess of one thousand dollars ($1,000) in any one fiscal year."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act is effective upon its passage and approval.

Approved February 25, 1963.

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## CHAPTER 68

An Act Amending Section 16-4527 of the Revised Codes of Montana, 1947, Pertaining to County Water Districts; Providing That Notice of Intention to Levy and Collect Taxes May be Given by Regular First Class Mail or Registered Mail and Providing That in the Said Notice of Intention the Boundaries or Description of the Lands to be Assessed May be Recited in Full or May be Given by Reference to Instruments Filed or Recorded in the Office of the Clerk and Recorder, Treasurer or Assessor of the County or Counties in Which the District or Part Thereof is Situate; Repealing All Acts or Parts of Acts in Conflict Herewith; and Providing a Saving Clause and an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 16-4527, Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Commissioners shall furnish estimate of required money.

"16-4527. **Commissioners to levy water taxes.** If, from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners of the county, or city and county, in which such water district is located, is required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board of commissioners, and to the auditor, respectively, an estimate in writing of the amount of money required



HeinOnline -- 1963 vol. I 134 1963

by the district for the payment of the principal of or interest on any bonded debt as it becomes due, and of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, a tax sufficient for the payment thereof to be known as the '..... county water district bond tax'; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected a tax sufficient for the payment thereof to be known as the '..... county water district water tax'.

Description of lands.

Board shall levy county water district taxes.

When the amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

Assessment.

When the written estimate of the amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

Notice of intention to levy.

(1) By posting notice thereof in five (5) public places within the boundaries of the lands upon which the tax is to be levied, and

Posting.

(2) By publishing a copy of the notice for ten (10)

Publication.



HeinOnline -- 1963 vol. I 135 1963

consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in the county wherein the district is located.

Mailing.

(3) By forwarding *regular first class mail or* registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

Amount.

(a) The amount of money required;

Assessment.

(b) The method of assessment which the board of commissioners intends to employ;

Lands.

(c) The boundaries or description of the lands to be assessed, *which said boundaries or description may be recited in full, or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer or assessor of the county or counties in which the district or part thereof is situate;* and

Hearing of protests.

(d) The time when and the place where, the board of commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto, which said hearing shall be had no less than fifteen (15) days after the last publication of the notice.

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, consid-



HeinOnline -- 1963 vol. I 136 1963

ered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Payment under protest.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, Revised Codes of Montana, 1947, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section."

Action to recover.

Severability.

Section 2. If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act.

Repealing clause.

Section 3. All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, or part thereof, heretofore repealed.

Effective immediately.

Section 4. This act shall be in full force and effect from and after the date of passage and approval.

Approved February 25, 1963.

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## CHAPTER 69

An Act Pertaining to Adjustment of Hail Insurance Losses With the State Board of Hail Insurance; and Amending Section 82-1516, R. C. M. 1947, to Allow Applicant Ten (10) Days After Receiving Adjustment Offer in Writing to Appeal; and Giving Applicant



HeinOnline -- 1963 vol. I 137 1963

Option to Submit Disagreement to Arbitration or to Bring Suit Against the State Board of Hail Insurance.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause

Section 1. Section 82-1516, R. C. M. 1947, is amended to read as follows:

Appeal to state board of hail insurance.

"82-1516. **Appointment of appraisers in case of dissatisfaction with official adjustment.** (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall

Ten days.

make such appeal by registered mail within *ten (10) days after receiving the adjustment offer of the state board in writing.* Also it is further provided that the state board of hail insurance may require the posting of a cash

Bond.

bond of ten dollars ($10.00) with the request for re-appraisal of the first adjustment. In cases where the board requires the posting of the ten dollar ($10.00) bond, the board may retain it for the hail insurance fund if no increase is allowed. If an increase is obtained, the board

Arbitration.

will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant *may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If*

Cause of action— trial de novo.

Appointment of appraisers.

*the claimant elects to submit the matter to arbitration he* shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance out of the hail insurance fund.



HeinOnline -- 1963 vol. I 138 1963

(2) If the insured shall be required to pay the expenses of such reappraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss. Expense of arbitration appraisal.

Provided, also, that where any claimant demands arbitration he shall, if required by the board, furnish a cash bond to the state board of hail insurance in the sum of twenty-five dollars ($25.00) which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the twenty-five dollar ($25.00) bond, then the state board may use a part or all of said cash bond. Any forfeits so collected shall be placed promptly in the state hail insurance administrative fund. In cases where the claimant secures an increase the bond shall be promptly returned to the claimant. Bond.

(3) The state board of hail insurance shall examine all reports of appraisers and verify the same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses and conduct examinations and do all things necessary to secure a fair and impartial appraisement of losses by hail.'' Authority to settle hail claims.

Approved February 25, 1963.

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## CHAPTER 70

An Act Providing That Under Chapter 18 of Title 84, R. C. M. 1947, the Date of Mailing is Deemed the Date of Filing of Reports, Notices, Payments or Claims for Refunds; Providing That the State Board of Equalization Establish Rules and Regulations and Authorizing the State Board of Equalization to Examine Records of Gasoline Dealers; Amending Section 84-1801, R. C. M. 1947, to Simplify the Definitions of Gasoline and Aviation Gasoline; Amending Section 84-1802, R. C. M. 1947, Deleting Requirement for Sworn Statements; Amending Section 84-1807, R. C. M. 1947, to Provide That the Lien has Effect of a Judgment Lien; Amending Section 84-1809, R. C. M. 1947, to Require Invoices of Dealers Contain Information Required by



HeinOnline -- 1963 vol. I 139 1963

the Board; Amending Section 84-1831, R. C. M. 1947, Changing the Definition of Special Fuels; Amending Section 84-1833, R. C. M. 1947, Providing for a One Thousand Dollar ($1,000.00) Bond for a Special Fuel Dealer and Providing for a Lien for Unpaid Taxes; Amending Section 84-1835, R. C. M. 1947, by Changing Filing Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Date of mailing deemed date of filing or receipt.

Section 1. **Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations.** When any application, report, notice, payment or claim for credit or refund to be filed with or made to any officer, agent, or employee of the state under the provisions of this chapter has been deposited in the United States mail, addressed to such officer, agent or employee, it shall be deemed filed or received on the date shown by the postoffice cancellation mark on the envelope containing it, or on the date it was mailed, if proved to the satisfaction of said officer, agent or employee of the state, establishes that the actual mailing occurred on an earlier date; provided, however, that no penalty for delinquency shall attach, nor will the statutory period be deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that such application, report, notice, payment, or claim for credit or refund was timely deposited in the United States mail, properly addressed to said officer, agent, or employee of the state, even though never received, if a duplicate of such document or payment is filed.

Timely mail deposit.

Duplicate.

Section 2. (a) **Rules and regulations**: The board shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof.

Examination of records—gasoline dealers.

(b) Examination of records: The board, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline dealer or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and



HeinOnline -- 1963 vol. I 140 1963

equipment are not maintained in this state at the time of demand they shall be furnished to the board for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

Section 3. That section 84-1801, R. C. M. 1947, is amended to read as follows: Amending clause.

"84-1801. **Definitions.** As used in this act, the following definitions shall apply: Definitions.

*(1) The term 'gasoline' includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. The term 'gasoline' does not include special fuels as defined in section 84-1831 (e).* "Gasoline."

(2) The word 'person' means any person, firm, association, joint stock company, syndicate or corporation. "Person."

(3) The words 'motor vehicle' mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline. "Motor vehicle."

(4) The word 'use' shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof. "Use."

(5) The word 'import' shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state. "Import."

(6) The word 'handle' means to produce, refine, manufacture or compound gasoline for sale or use; or to import gasoline into the state of Montana or to purchase gasoline within the state of Montana for sale or for use, upon which the license tax herein imposed has not been paid. "Handle."



HeinOnline -- 1963 vol. I 141 1963

"Dealer." (7) The word 'dealer' means and includes any person who engages in the business in the state of Montana of producing, refining, manufacturing or compounding gasoline for sale or use; or of importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use. Such gasoline, for the purpose of this act, shall be deemed to be 'handled' by such dealer.

"Aviation gasoline." (8) The words 'aviation gasoline' mean gasoline *or any other liquid fuel by whatsoever name such liquid fuel may be known or sold,* compounded for use in and sold for use in aircraft, *including but not limited to any and all such gasoline or liquid fuel* meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft."

Amending clause. Section 4. That section 84-1802, R. C. M. 1947, is amended to read as follows:

"84-1802. **Dealers' statements—amount of tax—aviation gasoline tax exemption certificates.**

Dealer shall furnish monthly statement of gasoline. (1) Each dealer shall, not later than the twenty-fifth (25th) day of each calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of license tax, in an amount equal to the lawful tax per gallon imposed by section 10 of chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana of 1945, and acts amendatory, or such other lawful tax as may be imposed by law for each gallon of gasoline so handled, and upon which such license tax was not paid by any other dealer in this state, for engaging in and carrying on such business in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. In addition a dealer may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid aviation gasoline tax exemption certificate, an amount equal to the tax per

Payment of tax.

2% allowed for loss.

Deduction for aviation gasoline.



HeinOnline -- 1963 vol. I 142 1963

gallon except the portion thereof allocated to the state aviation fund by section 1-501.

Any dealer engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one statement.

Dealer or consumer of aviation gasoline may secure permit.

(2) Any dealer at an established airport, who purchases aviation gasoline for resale directly to consumers using such gasoline in aircraft, or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed $5.00 for each permit issued and may provide that said permits shall be valid for a period not exceeding five years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

Fee.

Subject to revocation.

Permit holder may purchase aviation gasoline free of tax upon giving exemption certificate—except tax allocated to state aviation fund.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state aviation fund, upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a dealer other than at an established airport and the purchase is fifty (50) gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any dealer who sells aviation gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect

Seller not liable for tax.



HeinOnline -- 1963 vol. I 143 1963

or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state aviation fund; but notwithstanding any other provision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any dealer to the deduction authorized in subsection (1) of this section unless submitted to the board prior to the end of the second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued."

Time limit—submission of certificate.

Amending clause.

Section 5. That section 84-1807, R. C. M. 1947, is amended to read as follows:

Board may estimate tax, affix penalty.

"84-1807. **Procedure in case of failure to file statement or pay tax—lien of tax.** If any dealer or other person subject to the payment of such license tax shall fail, neglect, or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent dealer and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for non-payment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes due from any dealer under the

Interest.

Enforcement.

Taxes are lien on property.



HeinOnline -- 1963 vol. I 144 1963

provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such dealer or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as *judgment liens* are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the dealer to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest."

Filed in office of county clerk.

Payment—release of lien.

Section 6. That section 84-1809, R. C. M. 1947, is amended to read as follows:

Amending clause.

"84-1809. **Invoice of dealers.** Each dealer in this state handling any gasoline as defined in this act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and *such other information as the state board of equalization may require.*"

Dealer's invoice.

Section 7. That section 84-1831, R.C.M. 1947, is amended to read as follows:

Amending clause.

"84-1831. **Definitions.** As used in this act, the following definitions shall apply:

Definitions.

(a) 'Person' means and includes any person, firm, association, joint stock company, syndicate, copartner-

"Person."



HeinOnline -- 1963 vol. I 145 1963

ship, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, as applied to a firm, association, syndicate, or copartnership, means and includes the partners or members thereof, and as applied to joint stock companies and corporations, the officers thereof.

"Board." (b) 'Board' means the state board of equalization of the state of Montana.

"Public roads and highways of this state." (c) As used in this act, 'public roads and highways of this state' shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

"Motor vehicle." (d) 'Motor vehicle' means any vehicle which is self-propelled upon the highways.

"Special fuel." (e) *'Special fuel' means those combustible gases and liquids commonly referred to as liquid petroleum gases and also diesel fuel or any other volatile liquid of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.*

"Use." (f) 'Use' means either the receipt, delivery or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him, while such vehicle is within this state, or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state.

"Special fuel dealer." (g) 'Special fuel dealer' means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him. For this purpose the term 'fuel supply tank or tanks' does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

"Special fuel user." (h) 'Special fuel user' means any person who consumes in this state special fuel for the propulsion of



HeinOnline -- 1963 vol. I 146 1963

motor vehicles owned or controlled by him upon the highways of this state.

"Bond." (i) 'Bond' means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the board may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the board.''

Amending clause. Section 8. That section 84-1833, R. C. M. 1947, is amended to read as follows:

Unlawful to act as special fuel dealer without license. ''84-1833. **Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.** (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncancelled fuel dealers' license issued to him by the board.

Special fuel user must obtain license and vehicle permit. Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state board of equalization or any authorized employee of said board, or any other law enforcement officer.

Application to board. (b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board.

Form. (c) Form of application: The application shall be



HeinOnline -- 1963 vol. I 147 1963

filed upon a form prepared and furnished by the board. The application shall contain such information as the board deems necessary.

Bond.

(d) Bond: No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the board may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder.

Minimum amount.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as said board may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five hundred dollars ($500.00), *for a special fuel user and not less than one thousand dollars ($1,000.00) for a special fuel dealer.*

Board shall issue license.

(e) Issuance: Upon receipt of the application and bond in proper form, the board shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided,

Board may refuse after notice and hearing.

however, the board may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the board shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

Expiration.

(f) Expiration of license or permit: Each special fuel dealer's license, special fuel user's license and special fuel vehicle permit shall be valid until suspended or revoked for cause or otherwise cancelled.

License cannot be transferred.

(g) Assignment forbidden: No special fuel dealer's license, special fuel user's license or special fuel vehicle permit shall be transferable.



HeinOnline -- 1963 vol. I 148 1963

Board may revoke or cancel after notice and hearing.

(h) Revocation, suspension, cancellation and surrender of license and permit: The board may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the board shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring him to appear before the board on a day and hour specified in such notice not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the board may, in the exercise of reasonable discretion, suspend such license or permit.

Interim suspension.

Surrender of license.

Upon revocation by the board of any such license or permit, the holder thereof shall immediately surrender the same to the board for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the board for cancellation.

The board shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

Release of surety.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the board a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The board shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this

Notice.

New bond.



HeinOnline -- 1963 vol. I 149 1963

section, or make a deposit in lieu thereof as provided in section 84-1831 (i), the board forthwith shall cancel the special fuel dealer's or special fuel user's license.

Board may require additional bond or deposit.

(j) Additional bond or deposit: The board may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 2 (i) (84-1831) (i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the board, said board forthwith shall cancel his license."

Special fuel taxes are lien upon property.

*(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed by said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.*

Amending clause.

Section 9. That section 84-1835, R. C. M. 1947, is amended to read as follows:

Monthly tax returns.

"84-1835. **Monthly returns and payments.** (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the board, on forms prescribed by said board, a monthly tax return. Such return shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification. The return shall show such information



HeinOnline -- 1963 vol. I 150 1963

as the board may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the board need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the board may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Time limit on return.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date *or as provided in this chapter.*

(b) Computation: The tax imposed by this act shall be computed as follows: (1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle, (2) with respect to special fuel as to which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel consumed by him in the propulsion of motor vehicles on the highways of this state.

Computation of tax.

(c) Payments: The monthly tax return shall be accompanied by remittance covering the tax due hereunder on acount of the use as defined in 84-1831 (f) of special fuels during the preceding month.

Monthly payment.

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of one

Penalty—failure to file return.



HeinOnline -- 1963 vol. I 151 1963

hundred dollars ($100.00) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the board that his failure to file a return within the time prescribed was due to reasonable cause, the board shall waive the penalty provided by this subsection.

Unpaid tax—interest provided.

(e) Failure to pay tax: Where a special fuel dealer or a special fuel user files a return, but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one per cent (1%) per month or fraction thereof, from the date such tax was due to the date of payment in full thereof.

Deficiency—interest provided.

(f) Deficiency: If it be determined by the board that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

Board may estimate tax and add penalty, interest.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the board shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the board shall add the penalty and interest provided in subsection (d) above.

Burden of proof—assessment.

An assessment made by the board pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

Fraudulent return—penalty.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return



HeinOnline -- 1963 vol. I 152 1963

with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the board a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment in addition to all other penalties prescribed by law.

Limitation.

(i) Limitation: Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed under subsection (f) above within five (5) years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within five (5) years after the return is filed, whichever period expires the later."

Effective immediately.

Section 10. This act shall be effective upon its passage and approval.

Approved February 25, 1963.

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## CHAPTER 71

An Act to Amend Section 15-2011, R. C. M. 1947, Relating to the Securities Act of Montana and the General Provisions Regarding Registration of Securities Thereunder.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 15-2011, R. C. M. 1947, is amended to read as follows.

"15-2011. **General provisions regarding registration of securities.**

Registration statement may be filed.

(1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this act or a predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.



HeinOnline -- 1963 vol. I 153 1963

Commissioner may require conditions.

(2) The commissioner may require as a condition of registration by qualification or coordination (1) that any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

Registered securities may be sold.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent of the commissioner;

Suspension of registration.

*however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the Securities and Exchange Commission relative to said securities, and shall continue suspended so long as such proceedings are pending and until the registration or filing with the Securities and Exchange Commision is effective.* All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction. A registration statement which has become effective may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding.

Withdrawal of statement.

Commissioner may require reports.

(4) (a) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

Annual financial statement.

(b) During the period of public offering in the initial



HeinOnline -- 1963 vol. I 154 1963

distribution of securities registered under the provisions of this act by notification or qualification, financial data or statements corresponding to those required under the provisions of section 8 (2) and 10 (15-2008 (2) and 15-2010), and to the issuer's fiscal year, shall be filed with the commissioner annually, not less than ninety (90) days after the end of each such year. If such statements are not certified the commissioner may verify them by examining the issuer's books and records.''

Section 2. This act is effective on its passage and approval. Effective immediately.

Approved February 25, 1963.

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## CHAPTER 72

An Act Amending Section 40-2822, R. C. M. 1947, Pertaining to Countersignature Requirement on Insurance Policies Issued in Montana; Eliminating Necessity for Countersignature on Bid Bonds Required Under Section 6-501, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 40-2822, R. C. M. 1947, is amended to read as follows: Amending clause.

''40-2822. **Resident agent required—countersignature—records—exceptions.** (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless the policy is written through a licensed agent resident in Montana of the insurer, nor unless the policy or countersignature endorsement attached thereto is countersigned by such agent. Policy must be written through resident agent. Countersignature.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization, so long as the initials of such employee are written below the agent's name on such countersignature; but the agent shall not thereby delegate, or have power to delegate, to any other person the Written authority to countersign. Initialed by employee. Authority to bind insurer not delegable.



HeinOnline -- 1963 vol. I 155 1963

power or authority to bind an insurer with respect to any risk not already bound by the agent or other person having clear authority from the insurer so to bind. The agent shall be responsible for all of the acts of such employee within the scope of the authority so delegated. The agent shall keep a record of each and all coverages countersigned by him or by his authority.

Agent responsible.

Agent shall keep record.

Exceptions.

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

*(g) Bid bonds, as required under Section 6-501, R. C. M. 1947.*

Violation.

(4) Violation of this section shall not invalidate any contract otherwise valid as between the insurer and the insured.''

Approved February 25, 1963.

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## CHAPTER 73

An Act Amending Section 84-1813, R. C. M. 1947, Relating to the Tax on Diesel Fuel and Other Specified Motor Fuels; Specifying and Expanding the Uses, Sit-



HeinOnline -- 1963 vol. I 156 1963

uations and Conditions to Which the Tax Shall Apply When Used in Motor Vehicles, Motorized Equipment and Engines, and Providing for the Method of Collection.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 84-1813, R. C. M. 1947, is amended to read as follows: Amending clause.

"84-1813. **Tax to be collected on motor fuel, when.** The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect *or cause to be collected,* from the owners or operators of motor vehicles a tax in an amount equal to nine cents (9c) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, *or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the contsruction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivision."* Collection of tax on motor fuel. 9 cents per gallon on fuel used on highways including construction.

Approved February 25, 1963.

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## CHAPTER 74

An Act Amending Section 77-117, R. C. M. 1947, to Provide for an Assistant Adjutant General for Army and an Assistant Adjutant General for Air.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 77-117 of the Revised Codes of Montana, 1947, is amended to read as follows: Amending clause.

"77-117. **The adjutant-general of the state—assistant adjutants-general.** There shall be an adjutant-general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor Adjutant-general appointed by governor. Term of office.



HeinOnline -- 1963 vol. I 157 1963

Selection.

appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment.

Service.

He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment.

Duties.

He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments.

Salary.

The salary of the adjutant-general shall be seventy-five hundred dollars ($7,500.00) per annum, provided, however, that no part of said salary shall be paid by the state when the adjutant-general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant-general."

Separate departments for army national guard and air national guard—Each headed by brigadier general.

*The adjutant-general shall establish, within the state headquarters of the Montana national guard, separate departments for the army national guard and the air national guard. Each department shall have a brigadier general at its head, who will be referred to as assistant adjutant-general for Montana army national guard and assistant adjutant general for Montana air national guard.*

Appointment.

Selection.

*The assistant adjutants general shall be appointed by the adjutant-general with the approval of the governor. One shall be selected from the active list of the Montana army national guard and the other from the active list of the*

Qualifications.

*Montana air national guard, and each must have the qualifications set forth above for appointment as adjutant-general.*

Duties.

*They shall perform such duties as are prescribed by the adjutant-general.*

Effective immediately.

Section 2. This act is effective on its passage and approval.

Approved February 26, 1963.



HeinOnline -- 1963 vol. I 158 1963

## CHAPTER 75

An Act Amending Section 84-4198, R. C. M. 1947, to Provide That Lessee of Tax Deed Land Held by a County Shall be Given Preference on the Sale of Such Land If He Bids an Amount Equal to the High Bid for Such Land.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 84-4198, R. C. M. 1947, is amended to read as follows: Amending clause.

"84-4198. **Lessee of tax-deed lands has right within 30 days to purchase at appraised value.** Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of section 84-4194, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of section 84-4193, the said board shall by registered mail notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property at the appraised value thereof. Provided that nothing herein contained shall prohibit the board from, at any time, reappraising, readvertising and offering such land at public sale under the provisions of section 84-4190." *When tax deed lands held by the county are offered at public sale, pursuant to the provisions of section 84-4190, the lessee of such lands need not make a higher bid than others, but shall if bidding an amount equal to the highest bidder be given the preference.*

Lessee of tax deed lands may purchase within 30 days after notice.

Lessee meeting highest bid has preference.

Approved February 26, 1963.

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## CHAPTER 76

An Act to Amend Section 75-1632, R. C. M. 1947, by Deleting From Sub-Section 11 the Authority and Duty of the Trustees to Provide Clothing and Medical Aid for Indigent Children When It Shall be Made to Appear That Such Aid is Needed.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 75-1632, R. C. M. 1947, is amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. I 159 1963

Duties of school board.

"75-1632. **Duties of trustees.** Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

Prescribe rules.

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.

Hire teachers and employees.

2. To employ or discharge teachers, mechanics or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; nor unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.

Determine tuition.

3. To determine the rate of tuition of nonresident pupils.

Fix clerk's salary.

4. To fix the compensation of the clerk.

Enforce rules and regulations.

5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study.

Provide school furniture.

6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board.

Repair, insure and rent school buildings.

7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district.

School sites.

8. To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district;

School buildings.

to build, purchase or otherwise acquire schoolhouses, school dormitories and other buildings necessary in the operation of schools of the district, and to sell and dis-



HeinOnline -- 1963 vol. I 160 1963

pose of the same; provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three (3) notices in three (3) public places in the district at least ten (10) days prior to such election, which notices shall specify the time, place, and purpose of such election. Provided, further, that this subdivision shall not be so construed as to prevent the board of trustees from purchasing one (1) or more options for a school site.

Voter approval—electoin.

Notice.

Options.

9. To hold in trust for their district all real or personal property for the benefit of the school thereof.

Property held in trust.

10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six (6) years of age where the interest of the school requires such exclusion.

Pupils.

11. When deemed advisable, to employ a physician or registered nurse to make inspection into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.

Employ physician or nurse.

12. To require pupils to be furnished with suitable books as a condition of membership in school.

Books.

13. To exclude from school and school libraries all books, tracts, papers and other publications of immoral and pernicious nature.

Exclude books.

14. To require teachers to conform to the law.

Require conformance.

15. To make an annual report, as required by law, to the county superintendent on or before the first day of August in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

Annual report to county superintendent.

16. To make a report directly to the superintendent



HeinOnline -- 1963 vol. I 161 1963

Report to superintendent of public instruction.

of public instruction whenever instructed by him to do so.

Determine additional teaching.

17. To determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent in districts of the third class.

Visit schools.

18. To visit every school in their district at least once in each term, and to examine carefully into its management, conditions, and needs. This clause applies to each of the trustees.

Provide facilities.

19. To provide separate privies or outhouses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in a clean condition. Such privies or outhouses must be located and built in such manner as to secure privacy. In all cases where there is no fence dividing the play yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty (20) feet apart, and to require that all janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided, that any trustee or trustees, janitor, or janitors, failing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars ($100.00), or imprisoned in the county jail not exceeding ninety (90) days, or both such fine and imprisonment in the discretion of the court.

Require due care by janitors.

Penalty.

Allow non-resident pupils.

20. To allow pupils residing in other ditsricts to attend school in the district of which they have charge, if in their judgment there is sufficient room.

Display of flag.

21. To procure, by purchase or donation, and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every schoolhouse in their respective districts. Said flags shall be of dimensions not less than four (4) by six (6) feet, and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands, and which is not otherwise appropriated, for the purchase and erection of fixtures.



HeinOnline -- 1963 vol. I 162 1963

22. To close school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary. Close of school—teachers' association.

23. To provide foods, cooks, janitor services and equipment for school lunches when deemed advisable by the board. Governed by its own judgment, the board may impose a money charge, produce or services from the pupils desiring to and participating in the program of school lunches. School lunches—employees.

24. To provide for a system of bookkeeping and annual auditing of extracurricular funds; such bookkeeping system to be recommended by the state examiner and such audit to be made by a qualified accountant or by the state examiner if so requested. If the audit is made by the state examiner, then, there shall upon completion of the audit, be paid a fee of sixty dollars ($60.00) per day per man, into the state treasury, and the state treasurer shall accredit such payment to the special examiner's fund. A certified copy of such audit shall be filed with the county superintendent of schools, and notice of such filing and the availability of the audit to public inspection, shall be published by said superintendent in the next publication of a newspaper published within the district, or, in case there is no paper published within the district, in a newspaper published within the county, if any, and if none within the county then in the nearest newspaper published in an adjoining county and payment of such publication and audit shall be made from the extracurricular funds or from school district funds, as the board of trustees may decide." Bookkeeping system. Audit. Filing. Publication of notice.

Approved February 26, 1963.

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## CHAPTER 77

An Act to Amend Section 75-4303, R. C. M. 1947, by Striking a Portion Thereof, and to Amend Section 75-4304, R. C. M. 1947, by Changing the Amount of Tuition; Providing an Effective Date and Repealing Clause.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 75-4303, R. C. M. 1947, is amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. I 163 1963

Eligibility and procedure for admission to vocational training centers.

"75-4303. **Eligibility and procedure for admission.** Vocational training centers designated by the state board for vocational education shall admit for training any resident of the state of Montana, between the ages of sixteen (16) and twenty-one (21) years, provided that any such resident of the state, residing out of the county wherein a vocational center is located, shall make application for admission to training on or before the first day of June of the school year preceding the opening of the next school year. Notice of the acceptance or rejection of such applicant shall be given by the local authority of the training center on or before the first of July, following receipt of the application. Notice of the acceptance of the applicant shall be presented to the county superintendent of schools and the board of county commissioners of the applicant's residence on or before the 15th day of July."

Notice.

Amending clause.

Section 2. Section 75-4304, R. C. M. 1947, is amended to read as follows:

Attendance of non-residents.

"75-4304. **Attendance of persons residing outside county.** When attendance of any eligible person between the ages of sixteen (16) and twenty-one (21) years at a designated vocational training center, outside of the county of his residence, is authorized, as provided in section 75-4303, the board of county commissioners of the county of such residence must forthwith direct the county treasurer to pay from the high school transfer fund to the board of trustees of the school district, high school district or county high school designated as a vocational training center at which attendance has been authorized the sum of *two hundred fifty dollars ($250) a year*. The names of all applicants entitled to admission to the training center who are residents of the county wherein such center is located, shall be added to the list of those eligible to be counted for high school attendance."

Transfer of funds.

$250.00 per year.

Repealing clause.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved February 26, 1963.



HeinOnline -- 1963 vol. I 164 1963

## CHAPTER 78

An Act to Amend Section 40-2821, R. C. M. 1947, by Extending the Period When the Tax on Net Insurance Premiums Shall Be Two and One-Quarter Per Cent (2¼) of Such Premiums From the Calendar Years 1961 and 1962 to the Calendar Years 1963 and 1964.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 40-2821, R. C. M. 1947, is amended to read as follows: Amending clause.

"40-2821. **Tax.** (1) Each authorized insurer, and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state, shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (3) below) in form as prescribed by the commissioner showing total direct premium income including policy, membership and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana (with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state), after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, saving coupons and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance 'premium' includes only the risk portion of the charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts

Authorized insurers shall file annual report of direct premium income.

Title insurance "premium" defined.



HeinOnline -- 1963 vol. I 165 1963

shall not be included in total direct premium income and shall not be subject to tax.

Tax on net premiums computation.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two per cent (2%) of such premiums; provided that for each of the calendar years *1963* and *1964* the tax shall be computed at the rate of two and one-quarter per cent (2¼%) of such premiums.

Deduction allowed—50% investment.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision 'paid-in capital stock' as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and 'Montana securities' shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

"Paid-in capital stock" defined.

"Montana securities" defined.

Insurer shall file annual report of gross underwriting profit on wet marine and transportation insurance—tax.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in section 40-2907, written in this state during the calendar year next preceding, and shall at the same time pay to the commissioner a tax of three-quarters of one per cent (¾ of 1%) of such gross underwriting profit.

Computation—gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e. gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e. gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of in-



HeinOnline -- 1963 vol. I 166 1963

surers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (3) the amounts refunded, credited or paid as participation dividends or savings by such insurers to the holders of such contracts.

Tax on fire premiums reported separately.

(4) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

Premium tax in lieu of all other demands.

Exceptions.

(5) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state and taxes payable under section 82-1231, Revised Codes of Montana, 1947, (tax for support of state fire marshal activities), and demands for state, county, city, district, municipal, and school taxes, licenses, fees, and excises made because of operations prior to January 1, 1957.

Pre-emption.

(6) The state of Montana hereby pre-empts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general agents and agents as such, and on the intangible property of insurers or such agents; and no county, city, municipality, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general agents and agents as such, any such tax, license, or fee additional to such as are levied by the legislative assembly of Montana in this code.

Penalty—failure to pay tax.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.



HeinOnline -- 1963 vol. I 167 1963

Effective years.

(8) The provisions of this section shall apply to taxable years beginning after December 31, 1960.''

Approved February 26, 1963.

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## CHAPTER 79

An Act to Provide for the Support of the Government of Montana for the Years 1963 and 1964, Providing a Severability Clause and an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Tax levies—1963.

Section 1. The following tax levies for state purposes are hereby made upon all property in the state of Montana, subject to taxation, for the year 1963, as ascertained by taking the percentage of the true and full value provided by law for purposes of taxation, to-wit:

State general fund.

(a) For the state general fund, two (2) mills, or so much thereof as the state board of equalization may find necessary, under the provisions of section 84-713, Revised Codes of Montana, 1947.

University millage fund.

(b) For the university millage fund, to provide funds for the support of the greater university, as provided in referendum measure No. 61 and passed by vote of the people at the general election held November 4, 1958, six (6) mills, or so much thereof as may be necessary to raise the amount appropriated by the legislative assembly from the university millage fund for support of the units of the greater university.

University building bond fund.

(c) For the university of Montana building bond interest and redemption fund created under referendum measure No. 52, one (1) mill.

State hospital fund.

(d) For the Montana state hospital for the insane bond interest and redemption fund created under referendum measure No. 57, one-half (½) of one (1) mill.

State training school fund.

(e) For the Montana state training school bond interest and redemption fund created under referendum measure No. 58, one-half (½) of one (1) mill.

Tax levies—1964.

Section 2. The following tax levies for state purposes are hereby made upon all property in the state of Montana,



HeinOnline -- 1963 vol. I 168 1963

subject to taxation, for the year 1964, as ascertained by taking the percentage of the true and full value provided by law for the purposes of taxation, to-wit:

State general fund.

(a) For the state general fund, two (2) mills, or so much thereof as the state board of equalization may find necessary under the provisions of section 84-713, Revised Codes of Montana, 1947.

University millage fund.

(b) For the university millage fund, to provide funds for the support of the greater university, as provided in referendum measure No. 61 and passed by vote of the people at the general election held November 4, 1958, six (6) mills, or so much thereof as may be necessary to raise the amount appropriated by the legislative assembly from the university millage fund for support of the units of the greater university.

University building bond fund.

(c) For the university of Montana building bond interest and redemption fund created under referendum measure No. 52, one (1) mill.

State hospital fund.

(d) For the Montana state hospital for the insane bond interest and redemption fund created under referendum measure No. 57, one-half (½) of one (1) mill.

State training school fund.

(e) For the Montana state training school bond interest and redemption fund created under referendum measure No. 58, one-half (½) of one (1) mill.

Saving clause.

Section 3. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Effective immediately.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved February 26, 1963.

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## CHAPTER 80

An Act to Amend Section 84-6208, R. C. M. 1947, Relating to the Computation of Taxes by the County Assessor on Net Proceeds and Royalties; Providing for Withholding by the Producer; Providing for an Effective



HeinOnline -- 1963 vol. I 169 1963

Date and Repealing all Acts and Parts of Acts in Conflict.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause

Section 1. That section 84-6208, R. C. M. 1947, is amended to read as follows:

Assessor shall compute taxes on net proceeds and royalty assessments by September 15th.

"84-6208. **County assessors to compute taxes.** Immediately after the county board of equalization has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September.

Notice to operator.

The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law."

Operator liable for payment.

*The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that*

Operator may withhold estimated tax on royalty.

*the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.*

Effective years.

Section 2. The provisions of this act shall apply to the returns required to be filed in 1963 and for each year thereafter.

Repealing clause.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved February 26, 1963.

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## CHAPTER 81

An Act to Provide for the Assumption of Criminal and/or Civil Jurisdiction over the Confederated Salish and



HeinOnline -- 1963 vol. I 170 1963

Kootenai Indians and Their Reservation and Land as Authorized by Federal Law; Providing the Time and the Method Thereof, and the Duty of the Governor with Respect Thereto.

*Be it enacted by the Legislative Assembly of the State of Montana:*

State assumes criminal jurisdiction over Flathead Indian Reservation.

Section 1. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session.)

Tribal resolution to governor.

Section 2. Whenever the governor of this state shall receive from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes, community, band or group of Indians in this state, a resolution, expressing its desire that its people and lands be subject to the criminal and/or civil jurisdiction of the state of Montana to the extent authorized by federal law and regulation, he shall issue within sixty (60) days a proclamation to the effect that such jurisdiction shall apply to those Indians and their territory, or reservation in accordance with the provisions of this act; Provided, That he shall not issue such proclamation until such resolution has been approved in the manner provided for by the charter, constitution or other fundamental law of the tribe or tribes, if said document provides for such approval; provided further that he shall not issue such proclamation until there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

Proclamation within 60 days.

Approval of resolution.

Consent of county commissioners.

State shall assume jurisdiction 60 days after issue of proclamation.

Section 3. Sixty (60) days from the date of issuance of the proclamation of the governor as provided for by section 2 of this act, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and the criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.



HeinOnline -- 1963 vol. I 171 1963

Rights preserved.

Section 4. Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing or the control, licensing or regulation thereof.

Customs and culture preserved.

Section 5. Nothing in this act shall deprive, the Indian tribe, band or community from carrying on its age-old tribal dances, feasting or customary Indian celebrations or in any way try to destroy the Indian culture.

Tribe may withdraw consent.

Section 6. Any Indian tribe, community, band or group of Indians that may consent to come within the provisions of this act may, within two (2) years from the date of the governor's proclamation, withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within sixty (60) days after receipt of such resolution the governor shall issue a proclamation to that effect.

Proclamation.

Approved February 27, 1963.

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## CHAPTER 82

An Act Amending Section 93-901, R. C. M. 1947, Relating to the Disqualification of Judicial Officers.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 93-901, R. C. M. 1947, is amended to read as follows:

Judge may be disqualified.

"93-901. **Cases in which judge may be disqualified—calling in another judge.** Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:



HeinOnline -- 1963 vol. I 172 1963

1. To which he is a party, or in which he is interested; Party or interest.

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law; Relation.

3. When he has been attorney or council for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from; Attorney. Decision.

4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias or prejudice of such judge. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be pending. In any judicial district having only one judge the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the district court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least *fifteen (15)* days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of *fifteen (15)* days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. No more than two judges can be disqualified for bias or prejudice, in said action or proceeding, at the instance of the plaintiff,

Affidavit. Bias or prejudice. District having one judge—time limitation. Affidavit filed 15 days before trial. Judge without authority to act further—exceptions. Two disqualifications each allowed plaintiff and defendant.



HeinOnline -- 1963 vol. I 173 1963

and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion or proceeding; and upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding."

Order of assuming jurisdiction.

Approved February 27, 1963.

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## CHAPTER 83

An Act Amending Section 28-105, R. C. M., 1947, to Require That Before a Forest Fire Protection District May Be Created a Hearing Shall Be Held After Notice Given to All Owners to be Affected and to Require Approval Thereof by No Less Than 75% of the Owners Representing at Least 51% of the Acreage Included in the Proposed District; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 28-105, R. C. M., 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 174 1963

"28-105. **Powers of board.** To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered: Powers of board.

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper. To classify forest lands.

(b) To create organized forest fire protection districts; *provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than seventy-five per cent (75%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.* To create districts. Hearing. Notice—20 days. Service of notice—mail or publication. Approval—75% of owners of 51% of acreage.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies. To provide fire protection.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners. To make rules.

(e) To co-operate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder." To co-operate with U. S. government.

Section 2. This act shall be in full force and effect from and after its passage and approval. Effective immediately.

Approved February 27, 1963.



HeinOnline -- 1963 vol. I 175 1963

## CHAPTER 84

An Act to Provide That County Clerk and Recorders May Take Out Memberships in Certain Organizations at the Expense of the County.

*Be it enacted by the Legislative Assembly of the State of Montana:*

County clerks and recorders authorized to join associations.

Section 1. The county clerk and recorders of the counties of the state of Montana are hereby authorized and empowered to take out county membership in, and to cooperate with, associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests, and to pay for such membership in such associations or organizations out of county funds.

Pay from county funds.

Approved February 27, 1963.

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## CHAPTER 85

An Act to Amend Section 25-508, R. C. M. 1947, to Provide for Expenses for County Clerk and Recorders When Attending a General Association Meeting.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 25-508, R. C. M. 1947, is amended to read as follows:

Convention expenses paid from public funds limited to necessity of attendance.

"25-508. **Traveling expenses of officers attending conventions.** (1) Hereafter, no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer or employee may by virtue of his office find it necessary to attend, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary travel-

School trustees may make district member of associations and authorize payment of dues and traveling expenses for one member.



HeinOnline -- 1963 vol. I 176 1963

ing expenses of an employee, or one (1) member of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

Three members of county board may be allowed traveling expense and per diem.

(2) Provided, further, three (3) members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

County attorneys and sheriffs—traveling expense.

City or town—membership in organization of officials.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

Expense.

Fees, dues, expense—funds.

Claim.

County clerks allowed travel expense and per diem—Montana association meeting.

*(4) Provided, further, that all county clerk and recorders of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana Association of County Clerk and Recorders held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.''*

Approved February 27, 1963.



HeinOnline -- 1963 vol. I 177 1963

## CHAPTER 86

An Act to Amend Section 53-106.1, R. C. M. 1947, to Provide That Only a Motor Vehicle Manufactured More Than Thirty (30) Years Prior to the Year 1963 Shall be Licensed as a Collectors' Item.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 53-106.1, R. C. M. 1947, is amended to read as followes:

Application for registration of antique motor vehicles—collector's item only.

"53-106.1. **Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.** Any owner of a motor vehicle manufactured more than thirty (30) years prior to the *year 1963*, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The

Fees.

registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars ($5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars ($10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant two (2)

"Pioneer—Montana" license plates.

license plates bearing the inscription, "Pioneer-Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence;

Renewal upon sale.

provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the



HeinOnline -- 1963 vol. I 178 1963

registration thereof and pay the license fees hereinbefore specified.''

Approved February 27, 1963.

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## CHAPTER 87

An Act to Authorize Boards of County Commissioners to Lease County Facilities for the Purpose of Operating a Boarding Home or Nursing Home for the Aged.

*Be it enacted by the Legislative Assembly of the State of Montana:*

County board may lease county building for home for aged.

Section 1. The board of county commissioners may lease and demise county buildings, equipment, furniture and fixtures for purpose of operation of a boarding home or nursing home for aged persons with full power of lessor, except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the poor fund of the county. No such lease and demise shall be made for a longer period than five years, nor shall such board enter into a contract of lease without and until having advertised in a newspaper published in the county at least once a week for five weeks that the said buildings and equipment are for lease for the purpose of a boarding home or nursing home for aged persons.

Poor fund.

Maximum—5 years.

Advertising required.

Approved February 27, 1963.

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## CHAPTER 88

An Act to Authorize Boards of County Commissioners to Establish a County Boarding Home or Nursing Home for the Indigent or Non-Indigent Aged; *Providing This Act Shall Be in Full Force and Effect Upon Passage and Approval.*

*Be it enacted by the Legislative Assembly of the State of Montana:*

County board may operate home for aged.

Section 1. The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged subject to standards established by the state board of health.



HeinOnline -- 1963 vol. I 179 1963

Home shall provide care for indigent aged.

Section 2. The county boarding home or nursing home shall provide care, nursing care, maintenance, board and room for the indigent aged. If facilities permit, the county boarding home or nursing home may provide similar services to non-indigent aged and shall charge and accept such reasonable payment for such care as is determined by the board of county commissioners.

Payment—non-indigent aged.

Effective immediately.

*Section 3. This act shall be in full force and effect upon passage and approval.*

Approved February 27, 1963.

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## CHAPTER 89

An Act to Amend Chapter 13, Section 12, Rule 12, Laws of Montana, 1961, Montana Rules of Civil Procedure, Relating to Motions Covering Defenses and Objections.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Chapter 13, Section 12, Rule 12, Laws of Montana, 1961, is amended to read as follows:

"Section 12. Rule 12. **Defenses and objections—when and how presented—by pleading or motion—motion for judgment on pleadings.** (a) WHEN PRESENTED. Except as otherwise provided by statute applicable to particular defendants or proceedings, the responsive pleadings shall be served as follows: A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, or within 20 days after the completion of service of process as provided in Rule 4, unless the court directs otherwise when service of process is made pursuant to Rule 4-D (4). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order or such time as the order otherwise directs. Unless a different time is fixed by the court, when a motion permitted by these rules is served, the responsive pleading shall be served within 20 days after notice of the court's action

Defendant shall serve answer—20 days.

Answer to cross-claim—20 days.

Reply to counter claim—20 days.

Response to motion—20 days.



HeinOnline -- 1963 vol. I 180 1963

if the court denies the motion or postpones its disposition until trial on the merits, and shall be served within 20 days after the service of the more definite statement if the court grants a motion for a more definite statement.

Certain defenses allowed by motion.

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, *(3)* insufficiency of process, *(4)* insufficiency of service of process, *(5)* failure to state a claim upon which relief can be granted, (6) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered *(5)* to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Not waived by joining.

Defense at trial.

Motion—summary judgment.

Motion—judgment on the pleadings.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Motion—summary judgment.

Preliminary hearing.

(d) PRELIMINARY HEARINGS. The defenses specifically enumerated (1)-*(6)* in subdivision (b) of this rule whether made in a pleading or by motion, and the



HeinOnline -- 1963 vol. I 181 1963

motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

Motion—more definite statement.

(e) MOTION FOR MORE DEFINITE STATEMENT. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Court may strike pleading.

Motion—to strike.

(f) MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Motions consolidated.

(g) CONSOLIDATION OF DEFENSES. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

Waiver of defenses, objections.

Failure to state claim.

(h) WAIVER OF DEFENSES. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defenses of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later



HeinOnline -- 1963 vol. I 182 1963

pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received."

Lack of jurisdiction.

Approved February 27, 1963.

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## CHAPTER 90

An Act to Amend Section 59-516, R. C. M. 1947, to Provide That Certain Records May Be Destroyed After a Period of Twenty-Five Years.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 59-516, R. C. M. 1947, is amended to read as follows:

Amending clause.

"59-516. Certain records to be destroyed *after twenty-five years.* Any claim, warrant, voucher, bond or treasurer's general receipt *may* be destroyed by any county, city or town officer *after a period of twenty-five years.*"

Certain records destroyed after 25 years.

Approved February 27, 1963.

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## CHAPTER 91

An Act to Amend Section 32-1615, R. C. M. 1947, to Provide that the Highway Department Shall Prepare and File a Plat in the Same Manner as a Natural Person Whenever a Parcel of Land Taken for Highway Use is such a Shape or Size to Come Under the Provisions of Section 11-614, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 32-1615, R. C. M. 1947, is amended to read as follows:

Amending clause.

"32-1615. **Rights of way, and other properties, how procured.** The state highway commission shall have the

State highway commission—authority to build highways.



HeinOnline -- 1963 vol. I 183 1963

power and authority to lay out, alter, construct, improve and maintain highways in the state of Montana.

Notwithstanding any other provision of law, the state highway commission shall have the power and authority to acquire, by purchase or any other lawful manner, either in fee or in any lesser estate or interest, any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future state highway purposes. The acquisition of such lands or real property, or interest therein, for such purposes includes, but is not limited to, that which is deemed reasonably necessary by the state highway commission, for any of the following purposes:

To acquire land.

For rights of way. (a) For rights of way, including those necessary for state highways within cities.

For exchange. (b) For the purposes of exchanging the same for other real property to be used for rights of way or other purposes authorized herein, provided that the same shall not be acquired for such a purpose by condemnation procedures.

For road material. (c) For deposits of road building materials for reasonably foreseeable future road building purposes and uses, including rock, gravel, sand or earth; provided however that the right of eminent domain shall not be available for the acquisition of any such deposits of road building materials which may then constitute a component part of an existing private business enterprise.

Facilities. (d) For offices, weighing stations, shops or storage yards, buildings, rest areas, informational sites or communication facilities.

Parks. (e) Parks adjoining or near any state highway, provided that the same shall not be acquired for such a purpose by condemnation procedures.

Trees and shrubs. (f) For the culture and support of trees or shrubs which benefit any state highway by aiding in the maintenance and preservation of the roadbed.

Drainage. (g) For drainage in connection with any state highway.



HeinOnline -- 1963 vol. I 184 1963

View safety.

(h) For the maintenance of any unobstructed view of any portion of a state highway so as to promote the safety of the traveling public.

Stock lanes.

(i) For the construction and maintenance of stock lanes or trails.

Drainage.

(j) For the construction and maintenance or replacement of private or public irrigation systems, private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

Easements.

(k) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements or other easements for facilities or purposes then in place, or in effect, upon a proposed right of way.

Whenever it shall be deemed necessary by the commission to secure lands or other real property, or rights therein, as herein provided, and the same cannot be acquired by purchase at a price or cost which is deemed reasonable by the commission, the commission may direct the attorney general or any county attorney in any county in the state to procure the lands or other real property by proceedings to be instituted in the manner as provided in sections 93-9901 to 93-9926 against all nonaccepting landholders.

Proceedings to procure lands.

The commission may not so direct the attorney general or any county attorney to procure rights of way, easements, lands or other real property as hereinbefore provided, unless the commission first adopts a resolution declaring that public interest and necessity require the construction or completion by the state, of the highway or improvement, for one of the purposes set forth in this section, and that the rights of way, easements, lands or other real property, or interest therein, described in such resolution and sought to be condemned is necessary for the improvement and that the same is planned and located in a manner which will be most compatible with the greatest public good and the least private injury.

Resolution—public interest and necessity.

Such resolution of the commission shall create and establish a disputable presumption of the public necessity of such proposed public improvement; that the taking of such rights of way, easements, lands or other real prop-

Disputable presumption.



HeinOnline -- 1963 vol. I 185 1963

erty or interests therein, and the amount thereof, is necessary therefor; and that the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

May acquire whole parcel.

Whenever a part of a parcel of land or other real property is to be taken for state highway purposes and the remainder is to be left in such shape or condition as to be of little market value or to give rise to claims or litigation concerning severance or other damage, the state highway commission may acquire the whole parcel and sell the remainder or exchange the same for other property needed for state highway purposes.

Required plat—section 11-614, R.C.M. 1947.

*Whenever a part or parcel of land is taken for state highway purposes in such a shape or size as to come under the provisions set forth in section 11-614, R. C. M. 1947, the highway commission shall prepare and file in the office of the county clerk and recorder of the county in which said land lies, the required plat.*

The authority conferred by this chapter to acquire rights of way, easements, lands or other real property and interest therein for state highway purposes includes

Future needs.

authority to acquire for reasonably foreseeable future needs. The state highway commission is authorized to

Lease.

lease unused portions of any lands which are held for state highway purposes and interstate rights of way which are not presently needed for highway purposes on such terms and conditions as the state highway commission may fix and to maintain and care for such property in order

Rent—highway fund.

to secure rent therefrom. All rent so received shall be deposited in the state highway fund.

Right to use of material.

The acquisition of any right of way or easement by the state highway commission for construction, operation, repair, reconstruction, or maintenance of state highways shall include, among other rights, the right to use, remove, relocate, redistribute or otherwise dispose of any and all gravel or other road building materials, found or located within the boundaries of such rights of way or easements and such gravel or materials shall be deemed real property for the purposes of this act.''

Aproved February 27, 1963.



HeinOnline -- 1963 vol. I 186 1963

## CHAPTER 92

An Act for the Submission to the Qualified Electors of the State of Montana an Amendment to Section 29 of Article VIII of the Constitution of the State of Montana Relating to the Salary of the Justices of the Supreme Court and the Judges of the District Courts and Providing for the Quarterly Payment Thereof by the State of Such Salary and Providing that Such Salary Shall Not Be Diminished During the Terms for Which Such Justices and Judges Shall Have Been Respectively Elected.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amendment Section 29 Article VIII.

Section 1. That Section 29 of Article VIII of the Constitution of the State of Montana be amended as hereinafter provided, and that the question of such amendment be submitted to the qualified electors of the State of Montana, at the general election to be held in November of the year 1964.

Election 1964.

Amending clause.

Section 2. That Section 29 of Article VIII of the Constitution of the State of Montana be and it is hereby amended to read as follows:

Salary of justices of supreme court and district judges not diminished.

"Section 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected."

Submitted to votors— official ballot.

Section 3. This amendment shall be submitted to the qualified electors of the State of Montana by being placed upon the official ballot as provided by Chapter 11 of Title 23 of the Revised Codes of Montana, 1947, as amended and there shall be printed on such ballots the title of this act and the following words:

"☐ For the above Amendment.

☐ Against the above amendment."

Approved February 27, 1963.

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## CHAPTER 93

An Act to Provide that Licensed Physicians and Surgeons, and Other Persons, Shall Not Be Liable for Any Civil



HeinOnline -- 1963 vol. I 187 1963

Damages For the Rendition of Emergency Care or Assistance Done Without Compensation at the Scene of Emergencies or Accidents, for any Acts or Omissions by Such Persons Rendering such Emergency Care.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Physician and surgeon rendering emergency care not liable for civil damages—

Exceptions.

Section 1. **Emergency care rendered at scene of accidents.** Any person licensed as a physician and surgeon under the laws of the state of Montana, or any other person, who in good faith renders emergency care or assistance, without compensation, at the scene of an emergency or accident, shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by wilful or wanton acts or omissions by such person in rendering such emergency care.

Effective immediately.

Section 2. This act shall be in full force and effect from and after the date of its passage and approval.

Approved February 28, 1963.

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## CHAPTER 94

An Act Amending Section 91-2202, R. C. M. 1947, to Provide for Reasonable Compensation for Estate Appraisers, to be Allowed by the Court or Judge.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 91-2202, R. C. M. 1947, is amended to read as follows:

Court shall appoint three appraisers—reasonable compensation for services.

"91-2202. **Appointment and pay of appraisers.** To make the appraisement, the court or judge must appoint three disinterested persons, any two of whom may act, who are entitled to receive a reasonable compensation for their services to be allowed by the court or judge. The appraisers must, with the inventory, file a verified account of their services and disbursements; if only one day's service is charged, the account need not be verified. If any part of the estate is in any other county than that in which letters issued, appraisers thereof may be appointed by the district court or judge having jurisdiction of the estate, or by the district court or judge of such



HeinOnline -- 1963 vol. I 188 1963

other county, on request of the court or judge having jurisdiction."

Approved February 28, 1963.

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## CHAPTER 95

An Act to Amend Section 92-208, R. C. M. 1947, and Section 92-209, R. C. M. 1947, by Eliminating the Right of Election by Employees to be Bound by the Provisions of the Workmen's Compensation Act Except in the Case of Officers of Private Corporations.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 92-208, R. C. M. 1947, is amended to read as follows: Amending clause.

"92-208. *Employees bound by act—election.* Every employee *whose employer is bound by the provisions of this act* shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer *except officers of private corporations may elect not to be bound as employees under the act by a written notice in the form provided by the board, served in the following manner:* Employee bound by act except officers of private corporations may elect. Written notice.

*1. If the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering said notice to the board of directors of the employer.* Delivery to board of directors.

*2. If the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering said notice to the board of directors of the employer or the insurer.*

*3. If the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering said notice to the industrial accident board."*

Section 2. Section 92-209, R. C. M. 1947, is amended to read as follows: Amending clause.

"92-209. **Employer shall make election before being bound—employee presumed to have elected.** It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound Employer shall elect.



HeinOnline -- 1963 vol. I 189 1963

Employee presumed to have elected unless affirmative election not to be bound.

by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act, *as provided in section 92-208.* Provided, that an employer, after having been bound by one or the other of the three plans, may be cancelled as an employer under the act, when such employer actually ceases operating and files a signed statement to that effect with the board. Upon such filing the board may return the deposit of said employer if all premiums are paid."

Cancellation—signed statement.

Return of deposit.

Approved February 28, 1963.

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## CHAPTER 96

An Act Relating to the Regulation of Traffic on Highways; Amending Section 32-2174, R. C. M. 1947, so that the Section Will Refer to Vehicles Approaching a 'Yield' Intersection, Instead of a 'Yield Right Of Way' Intersection; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 32-2174, R. C. M. 1947, is amended to read as follows:

"Yield" sign—15 M.P.H.

"32-2174. **Vehicles approaching 'Yield' sign.** When the intersection is designated by the commission, or the local authority having jurisdiction, as a 'Yield' intersection, the driver of a vehicle approaching the 'Yield' sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a 'Yield' sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way."

Evidence—failure to yield right of way.

Effective immediately.

Section 2. This act is effective on its passage and approval.

Approved February 28, 1963.



HeinOnline -- 1963 vol. I 190 1963

## CHAPTER 97

An Act Amending Section 84-5606, R. C. M. 1947, to Provide That the Cigarette Excise Tax is a Direct Tax on the Consumer.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 84-5606, R. C. M. 1947, is amended to read as follows: Amending clause.

"84-5606. The tax. Subdivision—(1) *All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.* Cigarette taxes—direct tax on consumer. Seller shall display notice of tax.

Subdivision—*(2)* From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Five cents (5c) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5c) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package. Cigarette excise tax. Five cents.

Subdivision—*(3)* From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision *(2)* of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit: Additional tax.



HeinOnline -- 1963 vol. I 191 1963

Two cents.

Two cents (2c) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2c) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as hereby amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, or in said Korean War.

Continued to pay bonds—Veterans bonus—World War II and Korean War.

Additional tax.

Subdivision—*(4)* From and after the effective date of this amendatory act of the Thirty-fifth Legislative Assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions *(2)* and *(3)* of this section 84-5606, as amended by said section 16 of said Initiative Measure No. 54, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

One cent.

One (1) cent on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1c) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by this amendatory act of said Thirty-fifth Legislative Assembly, and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.

Continued to pay bonds—expenses of administration.

Dealer shall affix tax insignia.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon.

Cancellation.

Said insignia shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the

Destruction.



HeinOnline -- 1963 vol. I 192 1963

insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years."

Forgery—penalty.

Section 2. **Legislative intent.** The Legislative Assembly hereby declares that its intent in enacting Section 1 of this act is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the Federal Internal Revenue Code of 1954 in computing their taxable income.

Intent—deduction from taxable income.

Approved March 1, 1963.

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## CHAPTER 98

An Act to Amend Section 25-609, Revised Codes of Montana, 1947, Relating to Salaries of Elected County Officials; Providing that Salaries of Such Officials Shall Not be Changed During the Entire Term for Which Such Officials are Elected Regardless of Any Change in Population or Taxable Valuation of the County During Such Term; Providing That Persons Filling Vacancies That Occur in Such Offices Shall Receive the Same Salary as Their Predecessors For the Remainder of the Unexpired Term; Repealing All Acts or Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 25-609, R. C. M. 1947, is amended to read as follows:

Amending clause.

"25-609. Salaries fixed by county commissioners in September of each election year—*salaries not subject to change during entire term.* In September of any year in which the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the

Commissioners shall fix salaries of elected county officials.



HeinOnline -- 1963 vol. I 193 1963

county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in section 25-605, based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed."

Salaries not to be changed during term.

*When so fixed, the salaries shall not be changed during the entire term for which such officials are elected regardless of any change in population or taxable valuation of the county during such term. If a vacancy occurs in any office, the person who is appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office.*

Vacancy.

Same salary.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 1, 1963.

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## CHAPTER 99

An Act to Amend Section 71-302, R. C. M. 1947, to Provide That Time Spent in a Licensed Nursing Home or Hospital or a Private Charitable Institution, Shall Not Be Counted in Determining County Residence for The Purpose of Relief.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 71-302, R. C. M. 1947, is amended to read as follows:

"71-302. **Eligibility requirements for general relief.**

Eligibility—general relief.

An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance.

County resident—one year.

Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there

State resident—one year.

for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence.

Voluntary absence.

If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of



HeinOnline -- 1963 vol. I 194 1963

Montana. *Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be counted in determining the matter of county residence.''*

Time spent as patient not counted.

Approved March 1, 1963.

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## CHAPTER 100

An Act Validating, Ratifying, Approving and Confirming Bonds and Other Instruments or Obligations, Heretofore Issued By Public Bodies of This State, and All Proceedings Heretofore Taken By Such Public Bodies, to Authorize and Issue Such Bonds, Instruments and Other Obligations, However Described, and Providing That This Act May Be Cited As 'The 1963 Bond Validating Act'; Containing a Repealing Clause and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. This act may be cited as ''The 1963 Bond Validating Act''.

Citation clause.

Section 2. The following terms, wherever used or referred to in this act, shall have the following meanings:

Definitions.

(1) The term ''public body'' shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

"Public body."

(2) The term ''bonds'' shall include bonds, notes, warrants, debentures, certificates or indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

"Bonds."



HeinOnline -- 1963 vol. I 195 1963

Validation of bonds.

Section 3. All bonds heretofore issued for any of the purposes for which bonds may be issued by any public body of this state and all proceedings heretofore taken for the authorization and issuance of bonds by such public body, and the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

Limitation.

Section 4. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1963, in which the validity of any such proceedings or of any such bonds is at issue.

Repealing clause.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 6. This act is effective on its passage and approval.

Approved March 1, 1963.

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## CHAPTER 101

An Act to Adopt the Uniform Act for Simplification of Fiduciary Security Transfers as Promulgated by the National Conference of Commissioners on Uniform State Laws in 1958; Establishing a Mode for Transfer of Securities Held by Fiduciaries; Providing Evidence of Appointment or Incumbency of a Fiduciary; Providing for the Filing of Adverse Claims; and Removing a Duty by Corporations and Transfer Agents to Inquire



HeinOnline -- 1963 vol. I 196 1963

Into the Rightfulness of Security Transfers by Fiduciaries.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. **Definitions.** In this act, unless the context otherwise requires: Definitions.

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer. "Assignment."

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a benificiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties. "Claim of beneficial interest."

(c) "Corporation" means a private or public corporation, association or trust issuing a security. "Corporation."

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee. "Fiduciary."

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. "Person."

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation. "Security."

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security. "Transfer."

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation. "Transfer agent."

Section 2. **Registration in the name of a fiduciary.** A corporation or transfer agent registering a security in Registrant of security in name of fiduciary— no duty to inquire.



HeinOnline -- 1963 vol. I 197 1963

the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

Written notice.

Assignment by fiduciary—assumptions without inquiry.

Section 3. **Assignment by a fiduciary.** Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

Required evidence of appointment or incumbency of fiduciary.

Section 4. **Evidence of appointment or incumbency.** A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

Court certificate.

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

Other evidence.

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably



HeinOnline -- 1963 vol. I 198 1963

deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

Adverse claim—written notice.

Section 5. **Adverse claims.** (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

Notice to claimant.

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

Transfer withheld thirty days.

Non-liability for making transfer.

Section 6. **Non-liability of corporation and transfer agent.** A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

Non-liability of participants.

Section 7. **Non-liability of third persons.** (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether



HeinOnline -- 1963 vol. I 199 1963

the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

Guarantor of signature.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

No liability imposed.

(c) This section does not impose any liability upon the corporation or its transfer agent.

Law of jurisdiction of corporate organization applies.

Section 8. **Territorial application.** (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

Application.

(b) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

Tax obligations.

Section 9. **Tax obligations.** This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

Uniformity.

Section 10. **Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Title.

Section 11. **Short title.** This act may be cited as the Uniform Act for the Simplification of Fiduciary Security Transfers.

Repealing clause.

Section 12. **Repeal.** All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Effective immediately.

Section 13. **Time of taking effect.** This act shall be



HeinOnline -- 1963 vol. I 200 1963

in full force and effect from and after its passage and approval.

Approved March 1, 1963.

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## CHAPTER 102

An act to Amend Section 1-603, Revised Codes of Montana, 1947, as Amended by Chapter 16 of the Session Laws of the Thirty-first Legislative Assembly, 1949, Relating to the Operation of Aircraft in a Careless or Reckless Manner, by Providing That the Prohibition Against Operation of an Aircraft in Such Manner as to Endanger the Life or Property of Others Applies Specifically to the Pilot of Such Aircraft.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 1-603, Revised Codes of Montana, 1947, as amended by Chapter 16 of the session laws of the thirty-first legislative assembly, 1949, be and the same is hereby amended to read as follows:

Flight in aircraft lawful—

"1-603. **Lawfulness of flight—landings—recovery of damages.** Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully an the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. No person shall operate an aircraft, *as pilot thereof, either in the air or on the ground* in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein. The wilful and malicious use of aricraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

Exceptions.

Unlawful operation by pilot.

Livestock.

Punitive damages.

Landing unlawful without consent—except forced landing.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the



HeinOnline -- 1963 vol. I 201 1963

case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

Actual damages.

Approved March 1, 1963.

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## CHAPTER 103

An Act Authorizing and Empowering the Supreme Court of the State of Montana to Recommend Changes in the Criminal Law of the State of Montana to the End of Uniformity in Definition of Crimes, Arrests, Trials, Sentencing, Pardon and Paroles, for the Purpose of Simplifying Judicial Proceedings and Promoting the Speedy Determination of Litigation Upon Its Merits; Creating a Commission to Prepare Suggested Changes in the Criminal Law of the State of Montana and Prescribing the Membership and Powers and Duties of Said Commission; Providing for Employment of a Secretary-Stenographer of the Commission and Employment of Research Agencies, if Deemed Necessary; Providing for the Payment of Actual Travel and Other Expenses Incurred by Members of Said Commission in the Discharge of Their Duties; Providing That Such Recommended Changes in the Criminal Law of the State of Montana Shall be Submitted to the Thirty-ninth Legislative Assembly of the State of Montana for Its Consideration; Repealing all Acts and Parts of Acts in Conflict Herewith and Providing for an Effective Date of This Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Purpose—uniformity in definitions—criminal proceedings.

Section 1. The intent and purpose of this act is to establish a commission to suggest changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole.

Supreme court shall appoint eleven persons.

Section 2. That within thirty (30) days following the adjournment of this legislative assembly, the supreme court of Montana shall appoint a commission of eleven (11) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which



HeinOnline -- 1963 vol. I 202 1963

Commission shall study changes in criminal law.

commission shall make a complete study, consider and finally prepare suggested changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, which suggested changes shall be comprehensive in scope.

Commission composed of chief justice, associate justice, three district judges, seven lawyers.

Section 3. The commission shall be composed of the chief justice of the supreme court of the state of Montana, or an associate justice of the supreme court designated by the chief justice, three (3) judges from the district court of the state, and seven (7) lawyers. The judges so selected shall be from a list of suggested members submitted to the supreme court by the president of the Montana judges' association. Any lawyer actively engaged in the practice of law in the state of Montana or members of the faculty of the Montana university law school may submit an application to the supreme court indicating a desire to serve on such commission. The supreme court shall select members of the commission from among the applicants. The supreme court shall have the power to provide for terms of office, removals from office, filling of vacancies and changes in personnel of the commission.

Application.

Term removal, vacancy, changes.

Copies to bench and bar.

Section 4. The commission so appointed shall prepare its suggested changes and shall distribute copies to the bench and bar of the state for their consideration and suggestions as they may submit to the commission.

Tentative final draft.

Section 5. The commission shall within six (6) months after distribution of copies of the suggested changes submit the tentative final draft of suggested changes in the criminal law of the state of Montana, to the supreme court for approval.

Notice of hearing.

Section 6. The submission of the tentative final draft to the supreme court will be noticed by the court by mailing notice of hearing to all district judges of the state and all attorneys licensed to practice in the Montana courts, as shown by the records of the clerk of the supreme court, and heard by it within ninety (90) days after submission by the commission, and all interested persons and organizations may appear that day by petition specifying their suggestions or objections thereon.

Hearing petitions.

Legislature may adopt changes.

Section 7. Any suggested changes promulgated under



HeinOnline -- 1963 vol. I 203 1963

this act shall be effective only upon adoption by the legislature.

Supreme court may suggest changes to legislature.

Section 8. The supreme court of this state shall have the right to suggest changes and amendments to the criminal law of the state of Montana from time to time for consideration by the legislative assembly.

Secretary.

Compensation.

Research.

Section 9. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

Members allowed travel and expenses.

Sestion 10. Members of said commission shall serve without compensation, but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

Chairman and officers elected.

May adopt rules.

Records.

Section 11. The said commission shall from time to time elect one of its members as chairman, and may from time to time elect such other officers from among its membership as the commission may deem desirable. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

Severability.

Section 12. If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Repealing clause.

Section 13. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 14. This act shall be in full force and effect from and after its passage and approval.

Approved March 1, 1963.



HeinOnline -- 1963 vol. I 204 1963

## CHAPTER 104

An Act to Amend Section 75-1620, Revised Codes of Montana, 1947, Relating to the Expenses of Election; and Containing a Repealing Clause; and Fixing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 75-1620, R. C. M. 1947, be, and the same is hereby amended to read as follows: Amending clause.

"75-1620. **Expenses of election.** All the expenses necessarily incurred in the matter of holding *any and all* elections for school trustees, *extra levies, bonds, school sites, disposal of property, or any other election provided by law in any school district, high school building district, or county high school,* shall be paid out of the *general* school funds of the district, *or in the case of a high school building district, out of the high school general fund; or in the case of county high schools, out of the county high school general fund. In its discretion, the board of trustees may pay judges of any such election at a rate not to exceed one dollar ($1) per hour of service in connection with any such election.*" Expenses of school elections paid from general fund. Trustees may pay election judges.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Section 3. This act shall be in full force and effect from and after its passage and approval. Effective immediately.

Approved March 1, 1963.

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## CHAPTER 105

An Act to Amend Section 15-2015, R. C. M. 1947, Relating to the Securities Act of Montana and the Filing of a Consent to Service of Process Thereunder.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 15-2015, R. C. M. 1947, is amended to read as follows: Amending clause.

"15-2015. **Consent to service of process.** Every applicant for registration as a broker-dealer or investment



HeinOnline -- 1963 vol. I 205 1963

Security offeror must file consent to service of process on commissioner.

adviser or salesman under this act, and every issuer which proposes to *register and* offer a security in this state *through any person acting on an agency basis in the common law sense,* shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the Commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at its or his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Service on commissioner.

Notice by registered mail.

Affidavit.

Effective immediately.

Section 2. This act is effective on its passage and approval.

Approved March 1, 1963.

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## CHAPTER 106

An Act to Amend Section 75-3414 of the Revised Codes of Montana, 1947, as Amended, Relating to Transportation Budgets; to Provide That Cash Balances of a High School District Transportation Fund Shall be Used to Reduce the District Levy, Unless no District Levy Will be Required and That in Those Cases Cash Balances Shall be Used to Reduce the County Wide Levy.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-3414 of the Revised Codes of Montana, 1947, as amended, is hereby amended to read as follows:



HeinOnline -- 1963 vol. I 206 1963

"75-3414. **Budgets and levies for transportation.** (a) The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an elementary school or schools, outside the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor, which budget shall show in detail and by items the estimated expenditures and receipts for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the district to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any pupils not residing in the district at the time of adoption of the transportation budget who subsequently become residents of the district during the budget year. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budgeted expenditures of the district arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars ($100), the ten per cent (10%) limitation shall not apply and the district may budget for a contingency item of up to but not exceeding one hundred dollars ($100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. The total amount of the estimated expenditures, as shown by such transportation budget, shall be shown and included in the elementary school budget form and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in the elementary budget form as provided. A copy of the elementary transportation budget adopted, together with a duly signed copy of each and every contract form pertaining thereto shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the elementary school budgets are required to be so transmitted.

School trustees must adopt transportation budget— elementary schools.

Estimated expenditures.

Limitation on amount.

Form prescribed.

Copy to state superintendent.

(1) When the total elementary transportation budget has been presented in detail on approved forms including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual



HeinOnline -- 1963 vol. I 207 1963

transportation, and increased transportation due to isolation, and after deducting all estimated receipts including reimbursements, the balance of the budget shall be paid out of receipts from a tax levied upon all the taxable property of the school district.

Net budget paid by tax on property.

School trustees must adopt transportation budget—high schools.

(2) The board of trustees of every school district maintaining a high school, or furnishing transportation for its pupils to another high school, or services in lieu thereof, and the board of trustees of every county high school, shall have the authority and it shall be its duty to provide a complete transportation budget therefor, including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, or any service in lieu of transportation. The budget shall show in detail and by items the estimated expenditures and receipts, including the state transportation reimbursements, for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the high school to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any high school pupils not residing in the high school territory under the jurisdiction of the trustees at the time of adoption of the transportation budget who subsequently become residents of said territory during the budget years. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budget (ed) expenditures of the high school arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars ($100), the ten per cent (10%) limitation shall not apply and the high school may budget for a contingency item of up to but not exceeding one hundred dollars ($100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. A copy of the high school transportation budget adopted for each high school, together with a duly signed copy of each and every contract form pertaining thereto, shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the final high school budgets are required to be so

Estimated expenditures.

Limitation on amount.

Form prescribed.

Copy to state superintendent.



HeinOnline -- 1963 vol. I 208 1963

transmitted. For each high school transportation budget arrived at according to the schedule set up in section 75-3407, the amount remaining after deducting all estimated local receipts, and state transportation reimbursements from the total amount required for the transportation budget according to the schedule, shall be the amount required to be raised by tax levy for such high school transportation budget, and the total of all such amounts required to be raised by tax levy for all such high school transportation budgets shall be the total amount required to be raised by county-wide transportation levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that this amount shall not be more than two-thirds (2/3) of the total of each high school transportation budget according to the schedule as set forth in section 75-3407. The amount remaining in each high school transportation budget over and above the amount arrived at according to the schedules in section 75-3407, as amended, shall be the amount required to be raised by tax levy for each such high school transportation budget and all such amounts required to be raised by tax levy for each such high school transportation budget shall be the total amount required to be raised by high school transportation levy on the high school district if there be one; and in case of a county high school by a county levy, excluding those districts maintaining high schools, otherwise on the common school district, of which each particular high school is a part, and the county commissioners shall make a levy of such number of mills as will raise such needed amount; provided that the amount budgeted for high school transportation in any high school budget shall not be deemed or considered as a part of or included within the maximums for high school budgets as fixed and determined by chapter 199, laws of 1949, as amended, and the county-wide high school transportation levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-4516.1, unless the trustees making such budget so desire and the board of county commissioners find that such high school transportation levy is not required to raise the amount necessary for such budget for all purposes including transportation or services in lieu thereof.'' *Cash balances on*

Tax levy.

County-wide.

Limitation on amount.



HeinOnline -- 1963 vol. I 209 1963

Cash balance used to reduce district levy—ensuing year.

*hand at the end of the fiscal year shall be used to reduce the district levy for the ensuing year, provided that if there is a cash balance on hand at the end of a fiscal year and no district levy is required for the ensuing fiscal year under the foregoing provisions, then said cash balance shall be used to reduce the amount to be raised by county-wide levy as herein provided.*

Otherwise—county-wide levy.

Approved March 1, 1963.

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## CHAPTER 107

An Act to Amend Section 75-1630, R. C. M. 1947, Relating to Elementary School Attendance Outside the District of Residence; Providing for Authorization of Such Attendance; Providing for Payment of Tuition; and Fixing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 75-1630, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Permission may be granted for attendance outside district of residence—elementary schools.

"75-1630. **Transfer of funds.** Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendence in another district within or without the county of such children's residence when the following conditions exist:

Permission must be granted—conditions.

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own



HeinOnline -- 1963 vol. I 210 1963

district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

Rules for determining residence.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two counties by the county superintendents of such counties, to finally determine the residence of such child.

District of residence shall pay tuition to district of attendance—amounts.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hun-



HeinOnline -- 1963 vol. I 211 1963

dred twenty-five dollars ($225); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars ($200); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars ($175) per pupil.

Duty to include in budget.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Application, time, approval.

Application for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend.

Clerk shall transmit names.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such

Reimbursement.

district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out

Trustees may waive tuition.

of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; pro-

Tuition shall not reduce foundation program.

vided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

Tuition without vote.

In the case of a district which does not operate a



HeinOnline -- 1963 vol. I 212 1963

school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

Duty to determine eligibility of pupils.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Appeal.

Reciprocity—adjoining states.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis."

Tuition provided for dependent and neglected child or juvinile delinquent.

*Whenever a child has been declared by a district court of the state of Montana a dependent and neglected child as defined in section 10-501, or a juvenile delinquent child, as defined in section 10-602, and has been ordered to be placed in a duly licensed child care institution in the state of Montana, which institution is approved by the state department of public welfare, and as a result of such order such child is required to attend a public elementary school in a school district outside of the district in which he resides, the district receiving such pupil shall be entitled to receive tuition on the basis of the schedule established in this act, provided that the geographical relationship of the receiving district to the district of residence shall be of no consequences. All other provisions of this section, excepting solely the geographical relationship of the districts, shall be applicable to the payment of tuition for the education of such child.*

Geographical relation of counties—no consequence.

Section 2. This act shall be in full force and effect from and after the date of its passage and approval.

Effective immediately.

Approved March 1, 1963.



HeinOnline -- 1963 vol. I 213 1963

## CHAPTER 108

An Act to Amend Sections 23-1301 and 23-1312, R. C. M. 1947, Relating to Voting by Elector When Absent From Place of Residence or Physically Incapacitated From Going to Polls; Voting Before Election Day by Prospective Absentee or Physically Incapacitated Elector, by Providing that Same Should Apply to School Elections.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 23-1301, R. C. M. 1947, is amended to read as follows:

Absent or physically incapacitated elector may vote—elections.

"23-1301. **Voting by elector when absent from place of residence or physically incapacitated from going to polls.** Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county or who is physically incapacitated from attending the precinct poll of which he is an elector on the day of holding any general or special election, or primary election for the nomination of candidates for such general election, or any municipal, *school,* general, special or primary election, may vote at any such election as hereinafter provided."

Amending clause.

Section 2. Section 23-1312, R. C. M. 1947, is amended to read as follows:

Prospective absentee elector may vote before county, city, town, school clerk.

"23-1312. **Voting before election day by prospective absentee or physically incapacitated elector.** Any qualified elector who is present in his county after the official ballots of such county *or school district* have been printed and who has reason to believe that he will be absent from such county *or school district* on election day, or physically incapacitated as provided in section 23-1302 may vote before he leaves his county *or school district* or prior to the inception of such physical incapacity, in like manner as an absent or physically incapacitated voter, before the county or city or town clerk *or school district clerk,* or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county or city or town *or school district* clerk it shall be his duty to deal with it in the same manner as if it had come by mail."

Duty of clerk.

Section 3. The state superintendent of public instruc-



HeinOnline -- 1963 vol. I 214 1963

tion shall prepare the form of application for absentee voter ballot for school districts and such other forms and regulations as may be necessary to carry out the purpose of this act, as it pertains to school districts.

Form of absentee ballot—school elections.

Approved March 1, 1963.

## CHAPTER 109

An Act to Amend Section 4-172, R. C. M 1947, Enacted as Chapter 200, Laws of 1959, Relating to Bottle Clubs and Containing Definitions; and Providing for an Effective Date and Repealing Clause.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 4-172, R. C. M. 1947, is hereby amended to read as follows:

Amending clause.

"4-172. **Bottle clubs prohibited.** The operation of beer or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation or association. *A bottle club is hereby defined as any person, persons, partnership, firm, corporation or association maintaining premises, not licensed for the sale of beer or liquor, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic liquors, or otherwise furnishing premises for such purposes and from which they would derive revenue.*"

Bottle clubs prohibited.

Bottle club defined.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Repealing clause.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Effective immediately.

Approved March 1, 1963.

## CHAPTER 110

An Act Providing That Moneys Received by the State as Indemnification for Damage to State Buildings May Only be Used to Repair the Damaged Property, to Replace the Damaged Property, or be Transferred to the



HeinOnline -- 1963 vol. I 215 1963

Fund and Account from Which Premiums Were Paid on the Insurance Policy, and Providing Exceptions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Moneys received for damages to state buildings shall be used only to repair or replace damaged property.

Section 1. **Insurance on state buildings—use of proceeds.** (1) Moneys received by the state as indemnification for damage to state buildings, *except buildings procured by the state highway commission by purchase or condemnation for right-of-way purposes,* shall be deposited in the bond proceeds and insurance clearance fund. These moneys may only be:

(a) Used to repair the damaged property, or

(b) Used to replace the damaged property, subject to the limitations in subsection (2) of this section, or

Moneys transferred to premium fund.

(c) Transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of the damaged property, but shall be available for future legislative appropriation. If the moneys are not spent or committed within two (2) years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

Total loss—replacement.

(2) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subparagraph (c) of subsection (1) of this section.

Transfer of unused moneys.

Approved March 1, 1963.

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## CHAPTER 111

An Act to Amend Section 41, Chapter 13, Session Laws



HeinOnline -- 1963 vol. I 216 1963

of Montana, 1961, Being Rule 41, M.R.Civ.P. Relating to Dismissal of Actions, by Adding a New Sub-section.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 41, Chapter 13, Sessions Laws of Montana, 1961, being Rule 41, M.R.Civ.P., be and the same is hereby amended to read as follows:

Dismissal of actions.

Section 41. Rule 41. **Dismissal of Actions.**

(a) Voluntary Dismissal: Effect Thereof.

By plaintiff.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23 (c), of Rule 66, and of any statute of the State of Montana, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

By court.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Involuntary dismissal.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until

Motion to dismiss.



HeinOnline -- 1963 vol. I 217 1963

Dismissal as adjudication of merits.

the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for lack of an indispensable party, operates as an adjudication upon the merits.

Dismissal—counter-claim, cross-claim, third party claim.

(c) Dismissal of Counterclaim, Cross-Claim, or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served, or, if there is none, before the introduction of evidence at the trial or hearing.

Costs after previous dismissal.

(d) Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order."

Limitation—service of summons or appearance within three years.

*(e) No action heretofore or hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been served and return made within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years.*

Approved March 1, 1963.

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## CHAPTER 112

An Act Providing for the Establishment, Control, Financing, Conduct and Maintenance of a Department of Montana State Hospital Which Will Provide Services for the



HeinOnline -- 1963 vol. I 218 1963

Custody, Care, Treatment and Rehabilitation of Persons Suffering From the Illness of Alcoholism; Provide for the Admission, Detention, Costs, Maintenance and Release of Patients; Provide for Research into the Causes of Alcoholism; Provide for Prevention of Alcoholism; and Repealing Chapter 7 of Title 38 of the Revised Codes of Montana as Amended.

*Be it enacted by the Legislative Assembly of the State of Montana:*

"Alcoholism" defined.

Section 1. As used in this act "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations or economic functioning or to an extent which endangers the public health, welfare or safety.

"Alcoholic" defined.

An "alcoholic" is a person suffering from the illness of alcoholism.

Montana alcoholism services center established at Montana state hospital.

Section 2. There shall be established at Montana state hospital a department to be known as the Montana alcoholism services center which shall provide custody, care, diagnosis, treatment, rehabilitation, consultation, information, research, prevention and such other services as shall be necessary in the field of alcoholism.

Superintendent—authority and duties.

Section 3. The superintendent of the Montana state hospital shall have immediate control and charge of the Montana alcoholism services center and shall be responsible for discharging the duties required by this act and shall integrate the Montana alcoholism services center into the established functions of the hospital in a manner consistent with his responsibilities for the hospital as a whole.

Budget request.

Section 4. The superintendent of Montana state hospital shall include in *the* budget request stipulation for sufficient funds to execute the provisions of this act.

Center shall provide treatment for alcoholics.

Section 5. The Montana alcoholism services center shall provide custody, care, diagnosis, treatment and rehabilitation to persons in Montana who seek, or are required to seek, relief from the illness of alcoholism or the complications thereof; furnish consultation, information, guidance and cooperation to Montana communities and citizens committees who may seek assistance in establishing local alcoholism treatment and rehabilitation services; act as a state alcoholism information - consultation center for the

Furnish consultation information.

Act as state alcoholism information consultation center.



HeinOnline -- 1963 vol. I 219 1963

accumulation and dissemination of scientific information on alcoholism to all agencies, groups and individuals, public or private, who may require or seek such services; act as a center for the initiation, encouragement and coordination of practical research on alcoholism in Montana aimed at improving treatment, rehabilitation and prevention techniques or services; and provide full cooperation to those state agencies charged by law with the responsibility for public education on the effects of alcohol on the human system and the illness of alcoholism.

Act as center for research.

Education.

Personnel.

Section 6. The superintendent of the state hospital may assign to the Montana alcoholism services center, on a full or part time basis, the services of professional personnel and employees of the hospital and may also employ such additional alcoholism program administrators, counsellors, therapists and other specialists as he may deem necessary for the execution of this act. Such alcoholism specialists shall be classified as professional personnel of Montana state hospital.

Authority to accept gifts and donations.

Section 7. The Montana state hospital may accept or refuse on behalf and in the name of the state of Montana any grant, gift, donation, legacy or bequest, however it be created, from the United States government or agencies thereof, from agencies within or without the state or from any party and for any purpose whatsoever consistent with the provisions of this act. Such moneys or property shall be received and held by the state of Montana to be used in accordance with such terms and conditions as were imposed when the gift was created. Any such moneys or property shall not revert to the general fund at the close of the biennium.

Authority to enter cooperative agreements.

Section 8. The superintendent on behalf of the center may enter into cooperative agreements with other state agencies and departments to further the work of the center. Consistent with their authority and responsibility all state agencies may cooperate with the superintendent in the administration of the provisions of this act.

Admission.

Section 9. All persons requiring or requesting admission to the Montana alcoholism services center shall be admitted in the manner provided by law for the admission of any person to Montana state hospital.

Detention and release.

Section 10. All patients of the center may be detained



HeinOnline -- 1963 vol. I 220 1963

for whatsoever length of time as may be specified in the commitment procedure and form. However, the superintendent of the state hospital may grant an earlier release, discharge or convalescent leave according to the powers granted him in the laws, rules, regulations and procedures in effect for all patients of Montana state hospital.

Cost and expenses.

Section 11. All costs and expenses incurred in the examination, commitment and transportation of an alcoholic to the center shall be paid in the manner provided by law for the examination, commitment and transportation of any person to Montana state hospital.

Care and maintenance.

Section 12. The charges for care and maintenance of all patients of the center shall be in the same amount and collectable in the same manner as provided for by law for all patients of Montana state hospital.

Rules and regulations.

Section 13. The rules and regulations in force at Montana state hospital shall be the rules and regulations for the Montana alcoholism services center.

Severability.

Section 14. If any clause, sentence, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined and limited in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment is rendered.

Repealing clause.

Section 15. Chapter 7 of Title 38 of the Revised Codes of Montana, as amended, and all other acts or parts of acts in conflict with this act are hereby repealed.

Approved March 1, 1963.

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## CHAPTER 113

An Act to Amend Section 16-912, Revised Codes of Montana, 1947, Relating to Compensation of Members of the Boards of County Commissioners; Providing That the Salaries of the Members of Such Boards Shall Not be Changed During the Entire Term for Which Such Members Are Elected, Regardless of Any Change in the Classification of the County During Such Term;



HeinOnline -- 1963 vol. I 221 1963

Providing That Persons Filling Vacancies on the Boards of County Commissioners Shall Receive The Same Salary as Their Predecessors for the Remainder of the Unexpired Term; and Providing for Payment of Mileage; Repealing All Acts or Parts of Acts in Conflict Herewith; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 16-912, R. C. M. 1947, is amended to read as follows:

Salary—county commissioners.

"16-912. **Compensation of members of board.** Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

| | |
|---|---|
| First class | $5,000.00 |
| Second class | $4,900.00 |
| Third class | $4,800.00 |
| Fourth class | $4,700.00 |

Per diem—mileage.

Each member of the board of county commissioners in all other counties is entitled to fifteen dollars ($15.00) per day for each day's attendance on the sessions of the board, and *eight cents (8c)* per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed."

Salary shall not be changed during term.

*Salaries of the members of the board of county commissioners of a county shall not be changed during the entire term for which such members are elected, regardless of any change in the classification of the county during such term. If a vacancy occurs on the board of county commissioners, the person who is appointed and/or elected to fill the unexpired term shall receive the same salary as the person vacating the office.*

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 1, 1963.



HeinOnline -- 1963 vol. I 222 1963

## CHAPTER 114

An Act Directing the Commissioner of Agriculture to Transfer the Department of Agriculture Elevator Storage Trust Fund Held by the First National Bank and Trust Company, Helena, Montana, and the Department of Agriculture Bean Storage Fund, Held by the Yellow-Stone Bank, Laurel, Montana, to the General Fund.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Commissioner of agriculture directed to transfer elevator trust fund to general fund.

Section 1. The commissioner of agriculture is hereby directed to transfer that certain fund held by the First National Bank and Trust Company, Helena, Montana, and known as the Elevator Trust Fund, C. Lowell Purdy, commissioner of agriculture, trustee, and in the amount of $275.22, to the general fund.

Transfer bean storage trust fund to general fund.

Section 2. The commissioner of agriculture is further directed to transfer that certain fund held by the Yellowstone Bank, Laurel, Montana, and known as the Bean Storage Trust Fund, J. T. Sparling, commissioner of agriculture, trustee, and in the amount of $121.61, to the general fund.

Effective immediately.

Section 3. This act shall become effective upon its passage and approval.

Approved March 1, 1963.

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## CHAPTER 115

An Act to Amend Section 10-622, Revised Codes of Montana, 1947, as Amended by Chapter 166, Laws of 1961, Relating to the Appointment, Removal and Salaries of Probation Officers for the Juvenile Departments of District Courts in the State of Montana; Providing for Salary Increases and Change in Qualifications; and Repealing all Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 10-622, R. C. M., 1947, as amended by chapter 166 of the session laws of the state of Montana, 1961, be and the same is hereby amended to read as follows:

Judge may appoint chief probation officer.

"10-622. **Probation officers—appointments—removal—salaries.** In every judicial district of the state of



HeinOnline -- 1963 vol. I 223 1963

Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed *six thousand dollars ($6,000.00)*, or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

Salary— or per diem.

Judge may appoint additional personnel.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.''

Salary.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 1, 1963.

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## CHAPTER 116

An Act to Amend Section 59-538, R. C. M. 1947, Which Relates to the Payments for Subsistence or Per Diem Paid to Persons in the State Service for Time Engaged in Travel; to Provide That There Shall be Paid to Persons in the State Service for the Time Engaged in Travel Within the State While on Official Business



HeinOnline -- 1963 vol. I 224 1963

Ten Dollars ($10) Per Day, and for Time Engaged in Travel Outside the State Sixteen Dollars ($16) Per Day.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 59-538, R. C. M. 1947, is hereby amended to read as follows: Amending clause.

"59-538. **Expenses of persons in state service—per diem allowance.** Every person engaged in any service in every department of state, inclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, *ten dollars ($10)* per day for such travel within the state of Montana and *sixteen dollars ($16)* per day for such travel outside the state of Montana; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed fifteen dollars ($15) per day."

Persons in state service.

Per diem.

Exceptions.

Approved March 1,1963.

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## CHAPTER 117

An Act to Amend Section 25-401, R. C. M. 1947, and Section 25-404, R. C. M. 1947, Relating to Jurors' Fees and Witnesses' Fees.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 25-401 R. C. M. 1947, be and the same is hereby amended to read as follows: Amending clause.

"25-401. **Jurors' fees.** Grand and trial jurors shall receive *ten dollars* per day for attendance before any

Jurors shall receive ten dollars per day and eight cent mileage.



HeinOnline -- 1963 vol. I 225 1963

court of record and *eight* cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage."

Amending clause.

Section 2. That section 25-404 R. C. M. 1947, be, and the same is hereby amended to read as follows:

Witness fees—six dollars per day and eight cent mileage.

"25-404. **Witnesses' fees.** For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, *six dollars*. For mileage in traveling to the place of trial or hearing, each way, for each mile, *eight* cents; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day."

Exceptions.

Approved March 1, 1963.

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## CHAPTER 118

An Act Authorizing a Board of County Commissioners to Designate a Portion of a County or State Secondary Road as Emergency Area If Increased Traffic Due to a Construction Project Threatens Public Safety; and Prohibiting the Running of Livestock Across the Emergency Area Unless in Transit Under Herd in the Custody of an Attendant; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

County board may designate emergency road.

Section 1. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

Notice—publication.

Section 2. Notice of such designation shall be printed in a newspaper of general circulation in the county. The



HeinOnline -- 1963 vol. I 226 1963

notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

Livestock not permitted on emergency area.

Section 3. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

Officer may impound.

Section 4. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

Violation—penalty.

Section 5. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars ($10.00) or more than fifty dollars ($50.00) for each violation.

Effective immediately.

Section 6. This act is effective on its passage and approval.

Approved March 1, 1963.

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## CHAPTER 119

An Act to Amend Section 91-1702, R. C. M. 1947, to Provide That No Bond Be Required In Certain Cases, and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 91-1702, R. C. M. 1947, is amended to read as follows:

Administrators and executors bond.

"91-1702. Bond of administrators and executors, form and requirement of—*not required when.* Every person to whom letters testamentary or of administration are direct-



HeinOnline -- 1963 vol. I 227 1963

ed to issue must, before receiving them, execute a bond to the state of Montana, with two or more sufficient sureties or a sufficient surety company, to be approved by the district court, or a judge thereof. In form, the bond must be joint and several, and the penalty must not be less than the value of the personal property and the annual rents and profits of real property belonging to the estate, nor more than twice the value of such personal property and rents and profits; provided that upon written request of all the heirs, devisees or legatees and all being over twenty-one years of age and entitled to all of the estate upon distribution, the court may in its discretion fix the penalty of the bond at any sum less than the value of the personal property, and the annual rents and profits of the real property belonging to the estate; *and provided further that if, at the time of hearing any application for letters testamentary or of administration, it satisfactorily appears to the court or judge that the assets of the estate for which such letters of administration or letters testamentary are sought do not warrant the necessity of a bond on the part of the applicant, the court or judge may in its discretion order such letters to issue without bond; but such administrator or executor may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond as in other cases.*"

Form.

At request of heirs, devisees, legatees, court may fix lesser bond.

Where assets do not warrant, court may omit bond.

Bond may be later required.

Effective immediately.

Section 2. This act shall be in full force and effect from the date of its passage and approval.

Approved March 1, 1963.

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## CHAPTER 120

An Act to Amend Section 81-414, R. C. M. 1947, by Modifying the Procedure for Changing the Terms of State Land Leases.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 81-414, R. C. M. 1947, is amended to read as follows:

Lessee of grazing land desiring to cultivate portion may apply to commissioner.

"81-414. **Change in terms of lease.** Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing



HeinOnline -- 1963 vol. I 228 1963

any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall agree that for the remainder of the term of the lease the annual rental shall be at the rate of *the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated.* In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, the lease shall be subject to concellation or the lessee shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing rental thereof as may be decided by the board. The provisions of this section shall be incorporated in every lease.

Grazing fees and share crop rental.

Penalty for cultivation without right.

Approved March 1, 1963.

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## CHAPTER 121

An Act to Amend Section 3-1212, R. C. M. 1947, Relating to the Licensing of Nurserymen and Defining Seasonal Nurserymen, and Requiring Seasonal Nurserymen to Make Application for a License Not Less Than Thirty (30) Days in Advance of Doing Business Within the State of Montana Each Year.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 3-1212, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Amending clause.

"3-1212. **License required of nurserymen—application and payment of fees**—*seasonal nurserymen defined.* It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agri-

License required of nurserymen.



HeinOnline -- 1963 vol. I 229 1963

culture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fees, as in this act required, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge, upon request of the licensee. *No license shall be issued to a seasonal nurseryman unless the applicant shall have made application for such license at least thirty (30) days in advance of doing business within the state of Montana each year. A seasonal nurseryman is any person, firm, corporation, or other, engaged in the business of selling, dealing in, or importing into the state of Montana, for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.*

Application.

No license granted seasonal nurseryman except on 30 day application.

Seasonal nurseryman defined.

Form of license.

All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses must bear the date of issue and shall expire the first day of July next following the date of issue. The license fee shall be fifteen dollars ($15.00) per annum for a general nursery, dealing in all kinds of nursery products; ten dollars ($10.00) per annum for a nursery dealing in small fruits, ornamental shrubs, bulbs and perennials; five dollars ($5.00) for a nursery dealing in bulbs and perennials only; *and fifteen dollars ($15.00) for seasonal nurserymen.*"

Form of application.

Fees.

Aproved March 1, 1963.

## CHAPTER 122

An Act to Amend Section 4-341, of the R. C. M. of 1947, Relating to Fees for Beer Licenses, by Providing a



HeinOnline -- 1963 vol. I 230 1963

License Fee for Brewers Wherever Located Whose Product is Sold or Offered for Sale Within the State; Providing said Act Shall Not be Construed to Conflict With the Montana Beer Act and Containing a Severability Clause; and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 4-341, of the R. C. M. of 1947, be, and the same is, hereby amended to read as follows: Amending clause.

"4-341. **Fees for licenses—expiration dates—regulation by cities and towns.** Each licensee, under the provisions of this act, shall pay an annual license fee as follows: Annual license fees.

Each 'brewer', *wherever located, whose product is sold or offered for sale within the state, five hundred dollars ($500.00);* "Brewer."

Each 'wholesaler' four hundred dollars ($400.00); "Wholesaler."

Each 'retailer' two hundred dollars ($200.00); "Retailer."

Any unit of a nationally chartered veterans organization fifty dollars ($50.00);

Each 'vehicle' being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars ($25.00). "Vehicle."

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana liquor control board with the consent of the said board provided that said transferee shall qualify under this act. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana liquor control board based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana liquor control board; the cities and towns may also impose a fee on a licensee of the board for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the amount imposed by the state." *This act shall not be construed or interpret-*

Expiration. Transfer on application and consent of liquor control board.

Cities and towns may enact ordinances.

Copy filed with board.

Retail beer fee.

Montana beer act not affected.



HeinOnline -- 1963 vol. I 231 1963

*ed so as to repeal, amend, modify, change, or alter any provisions of the Montana beer act which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana.*

Severability.

*Section 2. If any word, phrase, clause, figure, sentence, subdivision, or section of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act.*

Repealing clause.

Section *3.* All acts and parts of act in conflict herewith are hereby repealed.

Approved March 1, 1963.

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## CHAPTER 123

An Act to Amend Section 59-801 and Section 59-802, R. C. M. 1947, Relating to Mileage of Public Officers and Providing Mileage Payments at the Rate of Twelve Cents (12c) Per Air Mile for Legislators and Other State Employees When Flying an Airplane on Official Business.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 59-801, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Officer using private vehicle—mileage.

"59-801. **Mileage of all officers.** Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobile *or airplanes* in the performance of official duties, shall be entitled to collect mileage at a rate of eight cents (8c) per mile for the distance actually traveled *by automobile, and at the rate of twelve cents (12c) per air mile for the distance actually traveled by airplane,* and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310."

Automobile—eight cents.

Aircraft—twelve cents.

Amending clause.

Section 2. That section 59-802, R. C. M. 1947, be, and the same is hereby amended to read as follows:



HeinOnline -- 1963 vol. I 232 1963

State or county officer or employee using private vehicle—mileage.

"59-802. **Same—liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile *or airplane* in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive eight cents (8c) per mile for each mile necessarily traveled *by automobile and twelve cents (12c) per air mile for each mile necessarily traveled by airplane* unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310."

Automobile—eight cents.
Aircraft—twelve cents.

Approved March 1, 1963.

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## CHAPTER 124

An Act Amending Sections 23-1309 and 23-1302 (1), R. C. M. 1947, by Providing that Absentee Ballots for Which Application Was Made After 12 Noon on the Day Next Preceding an Election Shall be Rejected and by Providing That No Applications for Absentee Ballots Shall be Issued by the Clerk After 12 Noon of the Day Next Preceding an Election.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 23-1309, R. C. M. 1947, is amended to read as follows:

Procedure—delivery of absentee voters ballots to judges.

"23-1309. **Delivery or mailing of ballots to election judges.** In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent or physically incapacitated voter resides, said larger envelope, containing the said voter's envelope, and his said application as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of election prior to the time of the



HeinOnline -- 1963 vol. I 233 1963

receipt by the said clerk of said absent or physically incapacitated voter's envelope, such clerk shall immediately after inclosing such voter's envelope and his application in a larger envelope, and after endorsing the latter as provided in the foregoing section, address and mail the larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided." *If any absentee ballots are received by the clerk for which application was made after 12 noon on the day next preceding an election, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected by authority of section 23-1309, R. C. M. 1947". Absentee ballots endorsed in this manner shall be delivered to the judge of election of said precinct and shall be rejected by the judge of election.*

Ballots received after election—rejection.

Amending clause.

Section 2. Section 23-1302 (1), R. C. M. 1947, is amended to read as follows:

Application—absentee voter's ballot—within 45 days preceding election.

"23-1302 (1). **Application of absentee or physically incapacitated person for ballot.** At any time within *the period beginning* forty-five (45) days next preceding such election *and ending at 12 noon on the day next preceding the day of election,* any elector expecting to be absent on the day of election from the county in which his voting precinct is situated, or any elector in United States service, or any elector who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots."

Aproved March 1, 1963.

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## CHAPTER 125

An Act to Amend Section 82-1008, Revised Codes of Mon-



HeinOnline -- 1963 vol. I 234 1963

tana, 1947, to Provide That the State Examiner Shall Have the Authority and it Shall Be His Duty to Audit the Books and Accounts of Fire Districts in Unincorporated Territories, Towns and Villages Supported by a Mill Levy; Providing for the Payment of Such Audit and Providing that Such Audit Shall be Filed With the County Clerk and Recorder.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 82-1008, Revised Codes of Montana, 1947, is amended to read as follows: Amending clause.

"82-1008. Examination of accounts of cities, towns and certain school districts, *and fire districts.* The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns. State examiner—duty to examine books of cities and towns yearly.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers, provided, however, that the trustees of any school district must, during the month of June of each calendar year, notify the state examiner if such examination will be required, in which event it shall be the duty of the state examiner to make an examination of such school district during the fiscal year following receipt of said notice. Duty to examine books of school districts yearly.

For such examination a fee of *seven dollars fifty cents ($7.50) per hour* per man shall be charged and said fee must be paid by such district into the state treasury and the state treasurer shall accredit such payment to the special examiners' fund. Fee.

In lieu of the examination by the state examiner as above provided, said school districts may provide for the examination of the books and accounts thereof by a qualified public accountant of the state of Montana. Public accountant may examine in lieu of state examiner.

A copy of the examiner's or accountant's report shall be filed with the county superintendent of schools, the Copies of report filed.



HeinOnline -- 1963 vol. I 235 1963

state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.''

Duty to examine books of fire districts yearly.

*The state examiner shall have the power and authority and it shall be his duty to make at least one (1) examination during each fiscal year the books and accounts of all fire districts and volunteer fire departments created and existing in unincorporated areas, towns and villages supported by a mill levy.*

Fee.

*For such examination a fee of seven dollars and fifty cents ($7.50) per hour per man shall be charged and said fee shall be paid by the fire district or fire department into the state treasury and credited by the state treasurer to the earmarked revenue fund.*

Copy of audit filed.

*A copy of such audit shall be filed with the clerk and recorder of the county in which such fire district or fire department exists.*

Aproved March 1, 1963.

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## CHAPTER 126

An Act Creating a State Board of Equalization Suspense Account for the Temporary Deposit of Moneys; Authorizing the State Board of Equalization to Refund Overpayments of the Inheritance Tax and All Other Taxes Collected by the Board, Plus any Interest and Penalty Due the Taxpayer, from the Suspense Account; Amending Sections 91-4418, 84-4501, 84-4825, 84-1812, 84-1818, R. C. M. 1947, and Repealing Sections 84-4953 and 84-4957, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

State board of equalization shall establish suspense account.

Section 1. The state board of equalization shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the board. All moneys received by the board shall be temporarily credited by the state treasurer to the board's suspense



HeinOnline -- 1963 vol. I 236 1963

account. Each month the board shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

Monthly distribution sheet.

Section 2. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state board of equalization, and there is no law providing for a refund, the board shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

Refund of overpayment of tax.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state board of equalization shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the taxpayer and shall grant a hearing on the claim. If the board disapproves a claim after holding a hearing, the determination of the board may be reviewed as provided by Section 84-4923.1, R. C. M. 1947.

Claim must be filed—5-year limitation.

Board shall examine.

Refund within 60 days after approval.

Hearing if disallowed.

Review.

Section 3. Section 84-4501, R. C. M. 1947, is amended to read as follows:

Amending clause.

"84-4501. **Payment of license fees under protest—action to recover.** Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under written protest, specifying the grounds of protest, to the state *agency or officer responsible for collecting the tax.* The person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state *agency or officer responsible for collecting the tax* to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced, and summons and copy of complaint served, within sixty (60) days after the date of payment thereof to the state *agency or officer responsible for collect-*

Payment of license fees under protest.

Written protest.

Action to recover.

Limitation—60 days after payment.



HeinOnline -- 1963 vol. I 237 1963

*ing the tax. If* such action be finally decided adversely to the state, *the state treasurer* shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered."

Refund on final judgment.

Amending clause.

Section 4. Section 84-4825, R. C. M. 1947, is amended to read as follows:

Board shall determine claim for refund.

"84-4825. **Disposition of moneys—refund claims.** All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. *If* any claim for refund be pending before the board, the board *shall determine* whether a refund should be made. *An* action or proceeding in court to determine the correctness of such tax *must be instituted* within sixty (60) days *after the payment of the tax.*"

Limitation of action—60 days after payment.

Amending clause.

Section 5. Section 84-1812, R. C. M. 1947, is amended to read as follows:

"84-1812. **Distribution and use of proceeds of tax.** All money received by the state treasurer in payment of license taxes under the provisions of this act *except that amount paid out of the State Board of Equalization's suspense account for gasoline tax refund* shall be used and expended by the state highway commission on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana; provided, that the total cost to the state for administration, dissemination of public information, and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission. Provided further that the expenditure for dissemination of public information shall not exceed an annual expendi-

Proceeds of license taxes shall be used by highway commission.

Limitation on costs—8%.

Limitation on public information.



HeinOnline -- 1963 vol. I 238 1963

ture of one hundred and twenty-six thousand five hundred dollars ($126,500.00). It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana."

Duty—matching federal funds.

Maintaining national park approach roads.

Section 6. Section 84-1818, R. C. M. 1947, is amended to read as follows:

Amending clause.

"84-1818. **Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, motor boats, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be entitled to said refund or drawback of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town; provided, that

Refund of gasoline tax—procedure.

Computation.

Government use—refund.

Limit on refund.



HeinOnline -- 1963 vol. I 239 1963

such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

Statement of use with invoices.

Application filed within 8 months of purchase.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within eight (8) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board *a warrant shall be drawn* upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

Approval by board.

Warrant.

Actual purchaser or user.

Board may correct error.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is willfully false in any particular and so made for the purpose of

May require amendment.

Board may reject for fraud.



HeinOnline -- 1963 vol. I 240 1963

misleading said board, the board may reject such claim in toto.

Application for refund permit.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

Record of permits and cumulative refunds.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

Fee.

A fee of one dollar ($1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

Renewal—5 years.

Board may suspend permit.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

Subdivisions subject to rules.

(7) All of the subdivisions of the state mentioned herein shall be subject to all of the conditions, rules and regulations applicable to individuals and as such subdivisions can act only by their officers and agents in presenting claims for refund they shall be responsible for and bound by the acts and declarations of such officers and agents.

Seller shall give invoice to purchaser.

(8) When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the



HeinOnline -- 1963 vol. I 241 1963

state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

Proof of lost invoice.

Seller shall retain duplicate invoice one year.

Seller shall obtain permit.

(9) Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefore to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number an dthe date of issuance. It shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollar ($1.00). Such permit must be renewed annually on or before the first day of January, 1956, and

Record of permits.

Fee.

Renewal annually.



HeinOnline -- 1963 vol. I 242 1963

each year thereafter, upon such application and fee paid. After the effective date of this act, it shall be unlawful for any person, firm, corporation or association to sell such gasoline upon whic ha refund may be claimed without a valid permit therefore. If any such person, firm, corporation or association shall sell any such gasoline without being the holder of a valid permit therefore, he shall be punished by a fine of not less than twenty-five dollars ($25.00), or more than two hundred dollars ($200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment."

Unlawful to sell without permit.

Penalty.

Section 7. Section 91-4418, R. C. M. 1947, is amended to read as follows:

Amending clause.

"91-4418. **Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Refund of inheritance tax after debt proved.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the clerk of court, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. The money shall be paid to the clerk of the district court who must deposit same with the county treasurer for credit to the clerk of the district court's deposit or trust fund until the correct amount of the tax has been determined. As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by such clerk of court out of said trust fund, and the county treasurer shall

Payment of estimate to clerk of court.

Refund of excess.



HeinOnline -- 1963 vol. I 243 1963

receipt for the amount of the inheritance tax so determined by the court."

Repealing clause.

Section 8. Sections 84-4953 and 84-4957, R. C. M. 1947, are repealed.

Approved March 2, 1963.

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## CHAPTER 127

An Act to Provide Registration of Commercial Feeds; Defining Commercial Feed and Other Terms; to Provide for Labeling Commercial Feeds; to Provide for Inspection and Sampling of Commercial Feeds and Fees Therefore; to Provide Prohibition Against Distribution of Non-registered, Adulterated, or Misbranded Feeds; to Provide for the Administration of this Act by the Commissioner of Agriculture and Empowering Him to Make Rules and Regulations Necessary to Administration of This Act; to Provide Power in the Commissioner to Detain, Condemn and Confiscate Feeds Being Distributed in Violation of this Act or Regulations Made Thereunder; to Provide Penalties for Violations of this Act or Regulations; and to Take Effect and be in Force From and After the First Day of January, 1964; Providing for a Severability Clause; and Repealing Sections 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Act administered by commissioner of agriculture.

Section 1. **Enforcing official.** This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner".

Definitions.

Section 2. **Definitions of words and terms.** When used in this act:

"Person."

(a) The term "person" includes individual, partnership, association, firm and corporation.

"Distribute."

(b) The term "distribute" means to offer for sale, sell, or barter commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder; the term

"Distributor."

"distributor" means any person who distributes.



HeinOnline -- 1963 vol. I 244 1963

(c) The term "sell" or "sale" includes exchange. "Sell," "sale."

(d) The term "commercial feed" includes customer-formula feeds as this term is used in this act and means any material whether simple, mixed, compounded, ground, unground, organic or inorganic, used as a feed for animals other than man, or any material including minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals and other substances, materials, or elements, or parts thereof intended for use or used as an ingredient or component of a mixture of materials, used as a feed for animals other man except: "Commercial feed." Exceptions.

(1) The mixed or unmixed whole seeds or meals made directly from and consisting of the entire seeds of corn, wheat, rye, barley, oats, buckwheat, flaxseeds, kaffir, milo and other grain seeds in combination or without molasses and containing no other ingredients.

(2) Unground hay.

(3) Whole or ground straw, stover, silage, cobs, husks, hulls, and wet beet pulp when not mixed with other materials and/or not pelleted.

(4) Individual chemical compounds when not mixed with other materials.

(5) Feeds used solely for household pets.

(6) Materials furnished by the customer-buyer and which were produced by the customer-buyer or acquired by him from a source other than from the person whose services are engaged in the milling, mixing, or processing of a mixture prepared for and in accordance with the specific instructions of the customer-buyer.

(e) The term "feed ingredient" means each of the constituent materials making up a commercial feed. "Feed ingredient."

(f) the term "customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder. "Customer-formula feed."

(g) The term "brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state. "Brand."

(h) The term "label" means a display of written, printed, or graphic matter upon or affixed to the con- "Label."



HeinOnline -- 1963 vol. I 245 1963

tainer in which a commercial feed or customer-formula feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

"Ton." (i) The term "ton" means a net weight of two thousand pounds avoirdupois.

"Percent." "Percentage." (j) The terms "per cent" or "percentage" means percentage by weight.

"Official sample." (k) The term "official sample" means any sample of feed taken by the chemist of the agricultural experiment station of Montana state college or his deputy and designated as "official" by the chemist.

"Contract feeder." (l) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed and/or customer-formula feed to animals pursuant to a contract whereby such commercial feed and/or customer formula feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

"Purchaser," "customer-buyer." (m) The terms "purchaser" and "customer-buyer" mean any person, firm, organization, agency, association, or group who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill services.

"Custom-mix," "custom-mill." (n) The term "custom-mix" or "custom-mill" means services only.

Ultimate consumer. (o) An ultimate consumer, means a person who feeds all or part of the feeds which he has received from the distributor.

Registration. Section 3. **Registration.**

Commercial fee. (a) Each commercial feed shall be registered before being distributed in this state; provided, however, that

Application. customer-formula feeds are exempt from registration. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall

Fee. be accompanied by a fee of ten dollars ($10.00) for each commercial feed submitted for registration. Upon the

Label and required information. request of the commissioner, each such registration shall be accompanied by a label or other printed matter describ-



HeinOnline -- 1963 vol. I 246 1963

ing the product, and shall include the information required by subparagraphs (2), (3), (4) and (5), of paragraph (a) of section 4. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. Once registered, the registration of a feed shall be renewed by December 31 of each year by payment of an annual fee of ten dollars ($10.00). Monies collected under the provisions of this section shall be deposited in the general fund of the state.

Renewal.

Fee.

The commissioner may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

Specific ingredients.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this act by another person.

One registration.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted by the commissioner provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

Changes in guarantee.

(d) The commissioner is empowered to refuse registration of any application not in compliance with the provisions of the act and to cancel any registration subsequently found not to be in compliance with any provisions of this act; provided, however, that no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this act.

Power to refuse registration.

Hearing.

Amendment.

Section 4. **Labeling.**

(a) Any commercial feed distributed in this state shall be accompanied by a legible label as approved by the commissioner, bearing the following information:

Approved label.

(1) The net weight.

Weight.

(2) The name or brand under which the commercial feed is sold.

Name brand.

(3) The guaranteed analysis of the commercial feed,

Analysis.



HeinOnline -- 1963 vol. I 247 1963

listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added:

Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the commissioner. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. Products sold solely as minerals and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

Names of ingredients.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the commissioner may by regulation, permit the use of collective term for a group of ingredients all of which perform the same function.

Person responsible.

(5) The name and principal address of the person responsible for distributing the commercial feed.

Affixing label.

(b) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

Label by invoice.

(c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

Mixer.

(1) Name and address of the mixer.

Purchaser.

(2) Name and address of the purchaser.

Sale date.

(3) Date of sale.

Brand—poundage.

(4) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.



HeinOnline -- 1963 vol. I 248 1963

(d) If a commercial feed or a customer-formula feed contains a non-nutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the commissioner may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed. Warning.

Section 5. **Inspection fees.** Inspection fees.

(a) Each and every person who distributes commercial feed in this state to the ultimate consumer shall pay to the commissioner an inspection fee, based on the gross annual value of feed distributed in this state, according to the following schedule:

Up to and including five hundred dollars ($500.00) gross annual value of feeds distributed—$10.00. Over five hundred dollars ($500.00) and up to and including one hundred thousand dollars ($100,000.00) gross annual value of feeds distributed—$25.00. Each and every twenty-five thousand dollars ($25,000.00) additional gross annual value of feeds distributed or fraction thereof, an additional inspection fee of—$10.00; provided, however, that distribution of commercial feeds to manufacturers are hereby exempted if the commercial feeds so distributed are used solely in the manufacture of feeds which are registered. Monies collected under the provisions of this section shall be deposited in the general fund of the state.

(b) Every person, except as hereinafter provided, who distributes commercial feed in this state shall: Annual statement.

(1) File, not later than the last day of January of each year, a statement setting forth the gross annual value of feeds distributed in this state during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. When more than one (1) person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the gross annual value of feeds so distributed and paying the inspection fee.

(2) Keep such records as may be necessary or required by the commissioner to indicate accurately the Records.



HeinOnline -- 1963 vol. I 249 1963

gross annual value of commercial feeds distributed in the state, and the commissioner or his authorized agent shall have the right to examine such records to verify statement of gross annual value of feeds distributed. Failure to make an accurate statement of the gross annual value of feeds distributed or to pay the inspection fee or to comply as provided for in this section shall constitute sufficient cause for the cancellation of all registrations on file for the distributor after a hearing as provided in this act, and the distributor shall be subject to the penalties set forth in section 12 of this act.

Cause for cancellation.

Section 6. **Customer - formula feed, special - formula feed, made to order feed, and custom-mixed or custom-milled feeds.**

"Customer-formula feed," "Special-formula feed," "Made-to-order feed."

(a) The terms "customer-formula feed," "special-formula feed" and "made to order feed" are synonymous and mean a mixture of commercial feed and/or feed material, all or any part of which except for molasses, is furnished by the person or distributor who processes, mixes, mills, or otherwise prepares such mixture, and which is mixed according to the specific instructions of the purchaser. The name and quantity of each item supplied by the purchaser must be shown and properly identified as such on the invoice furnished the purchaser and the portion of such mixture that is furnished by the person or distributor who processes, mixes, mills or otherwise prepares such mixture, shall likewise be shown on the invoice setting forth the information provided for in section 4 (c) and (d) of this act.

Purchaser items shown on invoice.

Compliance.

(b) No manufacturer or other person shall mix, mill, process or engage in a practice of mixing, milling, or preparation of a customer-formula feed without complying with the provisions of section 5 of this act.

"Commercial feed."

(c) Under section 2 (d) of this act, the term "commercial feed" is defined to include customer-formula feed. This definition is hereby re-affirmed, and all of the provisions of this act which apply to commercial feed also apply with equal force and effect upon "customer-formula feed" except where the language specifically exempts "customer-formula feed."

"Custom-mixed," "custom-milled."

(d) The terms "custom-mixed," "custom-milled," or similar terms means the service rendered a customer or



HeinOnline -- 1963 vol. I 250 1963

purchaser in the milling, mixing, or processing of materials produced by the customer or purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture, except that the addition of molasses acquired from the person who mixes, mills, or processes the mixture shall not be deemed to render such feed a commercial feed, and are not subject to the provisions of this act.

Adulteration forbidden and defined.

Section 7. **Adulteration.** No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

(a) If any poisonous, deleterious or non-nutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(c) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(d) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.

Misbranding forbidden and defined.

Section 8. **Misbranding.** No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded.

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another feed.

(c) If it is not labeled as required in section 4 of this act and in regulations prescribed under this act.

(d) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in adopting of such regulations the commissioner shall give due regard to



HeinOnline -- 1963 vol. I 251 1963

commonly accepted definitions such as those issued by the association of American feed control officials.

(e) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Inspection, sampling and analysis—duty and authority of chemist.

Section 9. **Inspection, sampling and analysis.**

(a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial feeds and customer-formula feeds distributed within this state at such time and place and to such extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The chemist individually or through his deputy, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution.

Method

(b) The method of sampling and analysis shall be those adopted by the chemist from sources such as the journal of the association of official agricultural chemists.

Official sample sole guide.

(c) The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in paragraph (k) of section 2 and obtained and analyzed as provided for in paragraph (b) of section 9.

Results of analysis.

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of the analysis shall be forwarded by the chemist to the distributor and purchaser and registrant. Upon request within ten (10) days the chemist shall furnish to the registrant a portion of the official sample concerned. If the registrant fails to agree with the analysis of the chemist, he may request an umpire who shall be one (1) of a list of not less than three

Umpire analysis—request and result.



HeinOnline -- 1963 vol. I 252 1963

(3) public chemists of recognized ability in feed analysis who shall be named by the chemist. Such umpire analysis shall be made at the expense of the registrant requesting the same. The request for an umpire analysis must be made within ten (10) days after receipt of a portion of the official sample, and the results of the umpire analysis must be mailed to the chemist within twenty (20) days from the date the portion of the official sample is received by the registrant of the feed in question. In case the umpire shall agree more closely with the chemist, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the registrant, then the figures of the registrant shall be considered correct.

Section 10. **Rules and regulations and hearings.**

(a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing; (1) having notified by mail all registrants on file and (2) having advertised once a week for two (2) consecutive weeks in two (2) newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial feeds as he may find necessary to carry into effect the full intent and meaning of this act.

Public hearing.

Notice—mail and publication.

(b) The commissioner shall, before denying the application for a registration or before cancelling or revoking any registration, set the matter down for a hearing and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person, or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

Hearing before denial of registration.

Written notice.

Service of notice.

Section 11. **Detained commercial feeds.**

(a) "Withdrawal from sale" orders. When the commissioner or his authorized agent has reasonable cause to



HeinOnline -- 1963 vol. I 253 1963

Commissioner may issue and enforce "Withdrawal from sale" order.

believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or of any of the prescribed regulations under this act, he may issue and enforce a written or printed "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the commissioner or the district court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin, or upon request of the distributor shall begin proceedings for condemnation.

Seizure on complaint to district court.

(b) Condemnation and confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner to a district court of competent jurisdiction in the area in which said commercial feed is located.

Confiscation.

In the event the district court finds the said commercial feed to be in violation of this act and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the district court without first giving the claimant an opportunity to apply to the district court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this act.

Penalties.

Section 12. **Penalties.**

Misdemeanor.

(a) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars ($300.00) or more than five hundred dollars ($500.00) for the first violation, and not less than three hundred dollars ($300.00) or more than one thousand dollars ($1,000.00) for a subsequent violation. In all prosecutions under this

Evidence—certified copy of official analysis.



HeinOnline -- 1963 vol. I 254 1963

act involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

Duty of attorney.

(b) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given the distributor and registrant to be heard before the commissioner pursuant to section 10 of this act.

Injunction.

(c) The commissioner is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred, to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. Said injunction to be issued without bond.

New trial.

(d) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

Commissioner may publish data.

Section 13. **Publications.** The commissioner may publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

Severability.

Section 14. **Constitutionality.** If any clause, sentence,



HeinOnline -- 1963 vol. I 255 1963

paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Repealing clause.

Section 15. **Repeal.** The following sections listed in chapter 20, title 3, Revised Codes of Montana, 1947: 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, pertaining to the distribution of commercial feeds, are hereby repealed.

Effective January 1, 1964.

Section 16. **Effective date.** This act shall take effect and be in force from and after the first day of January, 1964.

Approved March 2, 1963.

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## CHAPTER 128

An Act to Amend Section 10-111, Revised Codes of Montana, 1947, relating to the Bearing of Expenses in Furnishing Free Higher Education to Certain Inmates of the Montana Children's Center, the State Industrial School and the State Vocational School for Girls; Raising the Expenses to Be Borne by the Above Enumerated Institutions for Each of Such Students from Four Hundred Dollars ($400) to Eight Hundred Dollars ($800); Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 10-111, R. C. M. 1947, is amended to read as follows:

Expenses of education borne by institution.

"10-111. **Expenses of education, how borne.** Each of the respective institutions enumerated in section 10-110 of this code shall bear the expense of the education herein provided for and all bills for the same shall be presented and paid in the same manner as are other expenses incurred by said institutions. The expenses which shall be paid for each student shall consist of the actual necessary cost of transportation, board and room, clothing, books and stationery, and shall not exceed in

Yearly limit—$800 per student.



HeinOnline -- 1963 vol. I 256 1963

all the sum of *eight* hundred dollars (*$800*) per year for each student. No fee, tuition or other charge shall be made any such student by any of the state educational institutions enumerated in section 10-110.''

Section 2. This act is effective September 1, 1963. **Effective September 1, 1963.**

Approved March 2, 1963.

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## CHAPTER 129

An Act to Repeal Obsolete Statutes Pertaining to the Employment and Compensation of the Superintendent of Banks, Superintendent of Banks' Examiners and Clerks, Railroad Commissioners, Employees of the Board of Railroad Commissioners, State Engineer, Assistant Secretary of Carey Land Act Board, the State Fire Marshal, Assistant State Fire Marshal, First Assistant State Examiner, Deputy State Examiners and Clerk for the State Examiner, Marshal of the Supreme Court, Assistant Attorneys General, Attorney General's Law Clerk and Stenographers; Repealing Sections 5-605, 72-106, 72-108, 72-109, 72-110, 81-2011, 81-2014, 82-405, 82-407, 82-408, 82-1012, 82-1205, 82-1206 and 82-1803, Revised Codes of Montana, 1947; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Section 1. Sections 5-605, 72-106, 72-108, 72-109, 72-110, 81-2011, 81-2014, 82-405, 82-407, 82-408, 82-1012, 82-1205, 82-1206 and 82-1803, Revised Codes of Montana, 1947, are hereby repealed. **Repealing clause.**

Section 2. This act shall be in full force and effect from and after its passage and approval. **Effective immediately.**

Approved March 2, 1963.

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## CHAPTER 130

An Act Creating and Establishing a Montana State Game Wardens' Retirement System; Defining the Terms ''Accumulated Deductions', 'Beneficiary', 'Re-



HeinOnline -- 1963 vol. I 257 1963

tired State Game Warden', 'Board', 'Contributor', 'Final Salary', 'Actuarial Equivalent', 'Account', 'Involuntary Retirement', 'Member's Annuity', 'Optional Retirement Age', 'Retirement Age', 'Retirement Allowance', 'State Annuity', 'State Game Warden'; Creating a Montana State Game Wardens' Retirement Board; Providing for Payments Into the Montana Game Wardens' Retirement Account; Providing the Board May Establish Rules and Regulations for Proper Administration, Operation and Enforcement of This Act; Defining Who Shall Be Members of Said Retirement System; Creating a State Game Wardens' Retirement Account; Providing for Contributions by Members of the Montana State Game Wardens; Providing for Contributions by the State of Montana; Providing for Retirement, Voluntary Retirement, Retirement Allowance, Disability Retirement Allowance, Involuntary Retirement Allowance, Refunds in Case of Resignation or Discharge, Payments Upon Death, Payments in Case of Death from Natural Causes; Providing for Monthly Payments of Retirement Allowances; Providing for the Exemption from Taxes and Execution of Member's Annuity; Providing for the Manner of Designating Beneficiaries; Providing for Service in the Armed Forces of the United States; Prohibiting Fraud and Providing for the Manner of Correcting Errors; Providing for Restrictions on Payments to Beneficiaries; Providing for the Subrogation of the State of Montana to the Rights of the Members or Dependents Against Certain Third Parties; Providing for Payments Under Other Laws; Providing for Optional Retirement Allowances; Providing That Each Game Warden Shall Be Ineligible to Membership in State Public Employees' Retirement System; Providing That as to Constitutionality the Provisions of This Act are Severable; Providing This Act Shall Be in Full Force and Effect from and After Its Passage and Approval; and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Definitions.

Section 1. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions."

"Accumulated deductions," the total of the amount



HeinOnline -- 1963 vol. I 258 1963

deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board. "Beneficiary."

"Retired state game warden," any person in receipt of a retirement allowance under this act. "Retired state game warden."

"Board," the Montana state game wardens' retirement board. "Board."

"Contributor," any person who has accumulated deductions in the account, standing to his credit. "Contributor."

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served. "Final salary."

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available. "Actuarial equivalent."

"Account," the Montana state game wardens' retirement account in the agency fund. "Account."

"Involuntary retirement," a retirement not for cause and before retirement age. "Involuntary retirement."

"Member's annuity," payments for life derived from contributions made by the contributor. "Member's annuity."

"Optional retirement age," the age at which a contributor may retire after twenty (20) years service or more; provided that such contributor has reached the age of fifty-five (55) years. "Optional retirement age."

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service as a "Retirement age."



HeinOnline -- 1963 vol. I 259 1963

state game warden of the Montana fish and game department; provided that all members must retire at age sixty (60).

"Retirement allowance."

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity."

"State annuity," payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

State game warden defined.

Section 2. **State game warden.** Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys in the earmarked revenue fund.

Retirement system established.

Section 3. **Montana state game wardens' retirement system.** A retirement system is hereby established for Montana state game wardens.

Retirement board created—Same persons as P.E.R.S Board.

Section 4. **Montana state game wardens' retirement board.** There is hereby created a Montana state game wardens' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

Fund account.

Section 5. **Payments into the Montana game wardens' retirement system.** All contributions by the state fish and game moneys in the earmarked revenue fund and all contributions by the state game wardens as designated by section 1 above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administration thereof and the state board of land commissioners as to the investment thereof.

Long term investment of excess over $25,000.

Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-



HeinOnline -- 1963 vol. I 260 1963

five thousand dollars ($25,000), such excess will be invested by the state board of land commissioners as part of the long-term investment fund and any of the account less than twenty-five thousand dollars ($25,000) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana game wardens' retirement board.

Short term investment.

Section 6. **Rules and regulations—actuarial data.** The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and to the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

Rules and regulations.

Actuarial data.

Section 7. **Membership.** Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the Montana fish and game department, shall be required to become a member of the retirement system established by this act, on July 1, 1963, and thereafter when first becoming a state game warden. Contributions by members under this act shall commence with the first payroll after July 1, 1963. If any person becomes a state game warden subsequent to July 1, 1963, or shall have been at any time heretofore a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in such capacity.

Required membership July 1, 1963.

Contributions.

Section 8. **State game wardens' retirement account.** There is hereby created state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to said account. In addition thereto, all moneys any state game

Moneys constituting retirement account.



HeinOnline -- 1963 vol. I 261 1963

warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created and any such state game warden shall be allowed service credit hereunder for any such previous service, including other Montana state, county or city service. The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by state game wardens or as deputy game wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds.

Appropriation from public employees retirement system.

Section 9. **Payments by contributors.** Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

Monthly contribution— 7% of salary withheld.

Section 10. **Contributions by the state of Montana.** (a) There shall be paid out of the Montana fish and game moneys in the earmarked revenue fund, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana out of the fish and game moneys in the earmarked revenue fund, made on the basis of budgets submitted by the board.

Monthly contribution out of fish and game moneys equal to 7% of salary.

Section 11. **Retirement.** Any member in service who has completed at least twenty-five (25) years of creditable service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he

Retirement eligibility— 25 years of service, 55 years of age.



HeinOnline -- 1963 vol. I 262 1963

desires to be retired; provided that retirement shall be compulsory at age sixty (60). Compulsory at age 60.

Section 12. **Voluntary retirement.** If a contributor has served twenty (20) years of creditable service as a state game warden, and has reached the age of fifty-five (55) years, he is hereby granted the option and privilege of retiring and, in such case, his retirement allowance shall be proportionately reduced. Voluntary retirement—20 years of service, 55 years of age.

Section 13. **Retirement allowance.** Upon retirement from service a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half (1/2) of his average final salary. Retirement allowance—computation.

Section 14. **Disability retirement allowance.** In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided that if such total disability is a direct result of any service to the Montana fish and game department in line of duty, and the contributor has had over ten (10) years of service, then such state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half (1/2) of his average final salary. Total disability—Retirement allowance—computation.

Section 15. **Involuntary retirement allowance.** Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of an application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit. Involuntary retirement allowance—computation.



HeinOnline -- 1963 vol. I 263 1963

Refunds.

Section 16. **Refunds in case of resignation or discharge.** When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

Payments upon death in course of employment—computation.

Section 17. **Payments upon death.** If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the workmen's compensation act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater.

Payments upon death from natural causes—computation.

Section 18. **Payments in case of death from natural causes.** (a) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary. (b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 15 above.

Retirement allowance paid monthly.

Section 19. **Monthly payments of retirement allowances.** The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana.

Exemption from taxes and execution.

Section 20. **Exemption from taxes and execution.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.



HeinOnline -- 1963 vol. I 264 1963

Nomination of beneficiary.

Section 21. **Nomination of beneficiary.** Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

Options given members inducted in armed forces.

Section 22. **Service in the armed forces of the United States.** Any state game warden now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the account; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the account the full amount of such payments upon his return to state game warden status, and such repayments must be made within two (2) years after his return to active state game warden status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

Adjustment of errors.

Section 23. **Fraud—correction of errors.** (a) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system; (b) should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Misdemeanor.

Penalty.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000) or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

Restrictions on payments.

Section 24. **Restrictions on payments.** If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it



HeinOnline -- 1963 vol. I 265 1963

sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired, or where the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend for as long a time as it sees fit, disbursement of the state annuity.

Subrogation—third person liability.

Section 25. **Subrogation.** Where a third person is liable to the member or of his dependents for injury or death, the state shall be subrogated to the right of the dependents against such third person; but only to the extent of the state annuity payable under this act by the state. Any recovery against such third person, in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by such contributor.

Payments in addition to other benefits.

Section 26. **Payments under other laws.** All payments provided for in this act are in addition to any other benefits now or hereafter provided for under the workmen's compensation act of the state of Montana.

Optional retirement allowance.

Section 27. **Optional retirement allowance.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option No. 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 2. Upon his death, one-half (1/2) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insur-



HeinOnline -- 1963 vol. I 266 1963

able interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 3. Such other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

Transfer of accumulation.

Section 28. The board may in its discretion transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the accumulated deductions shall be transferred to the member's name upon subsequent re-entry to membership.

Membership in P.E.R.S. excluded.

Section 29. **State public employees' retirement system, ineligible to member.** Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

Severability.

Section 30. The provisions of this act are severable, and, if any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act.

Repealing clause.

Section 31. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 32. This act shall be in full force and effect from and after its passage and approval.

Approved March 2, 1963.

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## CHAPTER 131

An Act to Amend Section 66-815,, Revised Codes of Montana, 1947, Relating to License and Examination Fees



HeinOnline -- 1963 vol. I 267 1963

to Practice or Teach Cosmetology by Providing for a License Fee for Inactive Practitioners, and an Annual Renewal Fee for Cosmetological Establishments.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 66-815, R. C. M. 1947, is amended to read as follows:

Fees to practice or teach cosmetology.

"66-815. **Fees.** Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten ($10.00) dollars. Each person practicing cosmetology as an operator shall pay a fee of three ($3.00) dollars for the issuance of a license, and the further fee of three ($3.00) dollars annually for each renewal thereof. Each applicant for a manager-operator license shall pay a fee of five ($5.00) dollars, for the issuance of such a license and the further sum of five

Inactive license.

($5.00) dollars annually for each renewal thereof. *A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive li-*

Original license fee.

*cense upon the payment of an annual fee of three ($3.00) dollars. Every person, firm, copartnership or corporation originally opening a cosmetological establishment shall pay the sum of five ($5.00) dollars for the issuance of*

Annual license.

*the original license. The sum of three ($3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal of cosmetological establishment license.* Each person teaching cosmetology

Teacher's license.

shall pay a fee of five ($5.00) dollars, for the issuance of a license, and the further sum of five ($5.00) dollars

School license.

annually for each renewal thereof. Every person, firm, copartnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five ($25.00) dollars for a certificate of registration therefor, and pay a further sum of twenty-five

Apprentice license.

($25.00) dollars annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee

Itinerant license.

of three ($3.00) dollars. Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five

Fees paid annually.

($25.00) dolars. Such license fees shall be paid annually in

Exclusive.

advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the



HeinOnline -- 1963 vol. I 268 1963

state of Montana for the practice or teaching of cosmetology."

Approved March 2, 1963.

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## CHAPTER 132

An Act to Amend Section 94-35-204 of the Revised Codes of Montana, 1947, to Include Therein Horse, Mule, Mare, Colt, Foal, Filly and Lamb.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 94-35-204, R. C. M. 1947, is amended to read as follows:

Use of any vehicle for transporting stolen livestock forbidden—seizure and confiscation.

"94-35-204. **Stolen livestock—seizure and confiscating of vehicle used to transport.** The use of any vehicle for the transportation of any stolen *mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, hogs, poultry,* or the products of either thereof, shall be unlawful and such vehicle shall be forfeited to and confiscated by the state. Any such vehicle found in such use, or upon probable cause believed to be devoted wholly or in part to such use, shall be seized and held and, upon conviction in a proceeding in the name of the state of Montana against such vehicle, or against such vehicle and the owner, before any district court or judge thereof, shall be confiscated and sold; provided that such vehicle shall not be confiscated, or subject to forfeiture, if the same be a stolen vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft."

Approved March 2, 1963.

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## CHAPTER 133

An Act to Provide for the Marking of Motor Vehicles Operating on the Highways of the State of Montana, Providing a Penalty and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of



HeinOnline -- 1963 vol. I 269 1963

Vehicle over 10,000 pounds gross weight using highways must display name.

more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M. R. C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

Specifications.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

Exempt vehicles.

Section 2. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

Misdemeanor.

Penalty.

Section 3. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars ($100) or by imprisonment for not more than one (1) month, or both.

Effective July 1, 1963.

Section 4. The effective date of this act is July 1, 1963.

Approved March 2, 1963.

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## CHAPTER 134

An Act to Authorize and Direct the State Auditor to Deliver Certain Warrants to the Montana Territorial Centennial Commission.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Centennial commission may sell warrants dated prior to 1899.

Section 1. The state auditor is hereby authorized and directed to deliver to the Montana territorial centennial commission all remaining territorial warrants and all



HeinOnline -- 1963 vol. I 270 1963

state warrants dated prior to 1899 in his possession. The commission shall sell these warrants in any manner they see fit, upon authorization by the state controller.

Credit of proceeds.

Section 2. All money realized from the sale of these warrants shall be deposited with the state treasurer to the credit of the Montana territorial centennial commission and warrants issued upon authority of officers of the commission.

Effective July 1, 1963 to June 30, 1965.

Section 3. This act is effective from July 1, 1963, to June 30, 1965. On June 30, 1965, the existence of the commission shall cease, and all moneys of the commission shall be transferred to the state general fund.

Approved March 2, 1963.

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## CHAPTER 135

An Act to Authorize the Montana Livestock Commission, Upon Petition of Fifty-One Per Cent (51%) of the Sheep Raisers Owning Fifty-One Per Cent (51%) of the Sheep in Any County of the State, to Require a Permit for the Removal of Sheep From Such County; Providing for the Form and Issuance of Such Permits; Providing That It Shall Be a Misdemeanor to Remove Sheep from Such a County Without a Permit; and Providing for the Manner of Removing the Requirement for Such a Permit.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Petition to livestock commission.

Section 1. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

Permit for removal of sheep from county.

Misdemeanor.

Section 2. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or



HeinOnline -- 1963 vol. I 271 1963

assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

Form.

Section 3. Before making any order under this act, the livestock commission must provide for the form of the permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

Fee.

Publication of notice.

Section 4. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

Petition for order removing permit requirement.

Section 5. Upon receipt of a petition signed in the same manner as that specified in section 1 of this act, requesting the removal of the permit requirement, the livestock commission shall, at its next meeting, make an order removing the permit requirement.

Approved March 2, 1963.

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## CHAPTER 136

An Act to Amend Section 16-2008, R. C. M. 1947, to Provide That the Board of County Commissioners of Every County of the State Shall Be Vested with the Power and Authority to Issue, Negotiate and Sell Coupon Bonds on the Credit of the County for the Purpose of Building, Purchasing, Constructing and Maintaining Devices Intended to Protect the Safety of the Public from Open Ditches Carrying Irrigation or Other Water; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 16-2008, R. C. M. 1947, is amended to read as follows:

County board has authority to sell coupon bonds on credit of county.

"16-2008. **Board of county commissioners may issue bonds for certain purposes.** The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter



HeinOnline -- 1963 vol. I 272 1963

in this act more specifically provided, for any of the following purposes:

For acquiring land.

(a) For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

For construction of public buildings and protective devices on open ditches.

(b) For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same, *and for the purpose of building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water.*

For acquiring rights of way.

(c) For the purpose of acquiring rights of way for and constructing public highways and bridges, or either of them.

For liquidation of indebtedness.

(d) For the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line.

For outstanding county warrants.

(e) For the purpose of funding, paying and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund or poor fund, when there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants and the levying of taxes sufficient to pay and retire such warrants within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

For redeeming bonds.

(f) For the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds when there are not sufficient funds available to pay such bonds and it is deemed for the best interests of the county to refund such bonds.

For outstanding special warrants.

(g) For the purpose of funding, paying and retiring



HeinOnline -- 1963 vol. I 273 1963

outstanding seed grain warrants lawfully issued under the provisions of section 4651, and for the purpose of funding, paying and retiring outstanding special relief warrants lawfully issued under the provisions of section 4692, when there is not sufficient money available to pay such warrants and the levying of special taxes sufficient to pay the same within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

For judgments.

(h) For the purpose of funding, paying in full or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, when there are not sufficient funds available to pay such judgment and when sufficient money cannot be raised to satisfy such judgment by an annual tax levy of ten (10) mills levied on all the taxable property within the county through a period of three (3) years.

Resolution for issue.

The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board of county commissioners and the judgment creditor.

Board has authority to negotiate with bond holders.

(i) Whenever the total indebtedness of a county exceeds the constitutional limitation of five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

Resolution.

The plan agreed upon between the board of county



HeinOnline -- 1963 vol. I 274 1963

commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds."

Section 2. This act is effective on its passage and approval. Effective immediately.

Approved March 2, 1963.

## CHAPTER 137

An Act Requiring Submission of Vital Statistics Information by Clerks of the District Courts at Time of Entry of Decree of Divorce or Annulment and Providing for Transmittal of Such Information to the State Registrar of Vital Statistics.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Contemporaneously with the filing of a decree of divorce or annulment of marriage, there shall be submitted by the clerk of court of the district court with whom such action is filed a report of such action on a form prescribed by the state registrar of vital statistics. Said report shall contain information as follows: name, age, birthplace, residence, race or color, occupation and number of previous marriages of each party; the date and place of the marriage of the parties; the number of children under eighteen (18) years of age in the custody of either or both parties and residing with them; and the grounds of such action. Such information shall be supplied to the clerks by the parties to the action or their respective attorneys. Clerk of court shall submit report on divorce or annulment to state registrar of vital statistics.

Section 2. The clerk of the district court shall indicate upon said form the cause number of the action, the county and the judicial district wherein filed the date of the judgment and to which party granted. The completed form shall be transmitted to the state registrar as provided by Section 69-536, R. C. M., 1947. Form shall show title of court and cause number.

Approved March 2, 1963.

## CHAPTER 138

An Act Authorizing the State Fish and Game Commission to Issue Special Nonresident Antelope and Special



HeinOnline -- 1963 vol. I 275 1963

Nonresident Deer Licenses, Fixing the Fees, and Powers and Duties Under Such Licenses, and Containing an Expiration Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Special nonresident antelope and deer licenses provided.

Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104, Revised Codes of Montana, 1947, as amended. Such special licenses will be valid only for the area designated in the license, and shall expire annually on the thirty-first (31st) day of December. Such special licenses shall be issued only in areas which are not open to the hunting of elk. In areas where ten (10) or more written complaints from persons in the area involved, relating to the issuance of special nonresident deer and antelope permits, have been received by the fish and game department, a hearing at the county seat nearest to the area concerned must be held by representatives of the fish and game department where public protests will be heard. Such written complaints must be received within thirty (30) days after first announcement of seasons by the fish and game commission on or before the first day of August. Notice of such hearing shall be published in at least four (4) issues of local newspapers and by radio stations in the area concerned at least thirty (30) days prior to the date of the hearing. The fee for a special non-resident deer license shall be twenty dollars ($20.00) and the fee for a special nonresident antelope license shall be twenty dollars ($20.00). Not more than one (1) special nonresident deer license, and one (1) special nonresident antelope license shall be issued in any one (1) year to a nonresident. The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

Written complaint.

Hearing.

Publication of notice.

Fees.

Tagging.

Shipping permit.

Effective until December 31, 1964.

Section 2. This act shall remain in full force and effect until December 31, 1964.

Approved March 2, 1963.



HeinOnline -- 1963 vol. I 276 1963

## CHAPTER 139

An Act to Amend Section 94-3579, Revised Codes of Montana, 1947, Relating to Use of Firearms by Children Under the Age of Fourteen Years.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 94-3579, Revised Codes of Montana, 1947, is amended to read as follows: Amending clause.

"94-3579. **Firearms — Use of by children under the age of fourteen years prohibited.** It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian *or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian.*" Use of firearms by minors under 14 years of age unlawful except under supervision.

Section 2. This act is effective upon passage and approval. Effective immediately.

Approved March 2, 1963.

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## CHAPTER 140

An Act Amending Section 75-1804, of the Revised Codes of Montana, 1947, Removing the March 1 to July 1 Limitation on Annexation and Consolidation of School Districts as Provided in Section 75-1813, Revised Codes of Montana, 1947, and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That Section 75-1804 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows: Amending clause.

"75-1804. (1023) **Limitation in creating or changing boundaries of districts.** No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year; *provided, that this limitation shall not apply to boundary changes made under Section 75-1813.*"



HeinOnline -- 1963 vol. I 277 1963

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 2, 1963.

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## CHAPTER 141

An Act to Amend Section 82-1008 of the Revised Codes of Montana, 1947, as Amended, to Provide for an Annual Examination by the State Examiner of the Books and Accounts of All School Districts of the First and Second Class and of Third Class Districts Maintaining a High School, and Deleting Therefrom Optional Provisions with Respect to Such Examinations; and Repealing All Acts and Parts of Acts in Conflict Therewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 82-1008 of the Revised Codes of Montana, 1947, as amended, is hereby amended to read as follows:

State examiner shall examine books of cities and towns annually.

"82-1008 **Examination of accounts of cities, towns and certain school districts.** The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

Duty to examine books of school districts annually.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

Fee.

For such examination a fee of sixty dollars ($60) per day per man shall be charged and said fee must be paid by such district into the state treasury and the



HeinOnline -- 1963 vol. I 278 1963

state treasurer shall accredit such payment to the special examiners' fund.

A copy of the examiner's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained." Copies shall be filed.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Approved March 2, 1963.

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## CHAPTER 142

An Act to Amend Sections 11-725 and 11-728, R. C. M., 1947, Pertaining to Salaries and Qualifications of Mayors and Aldermen and Salaries of City and Town Treasurers; Providing the Maximum Salary That May Be Paid to Mayors of Second and Third Class Cities, Mayors of Towns, and Aldermen of All Cities and Towns; Providing the Maximum Salary That May Be Paid to City and Town Treasurers.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That Section 11-725, R. C. M., 1947, as amended, be, and the same is hereby amended to read as follows: Amending clause.

"Section 11-725. **Salaries and qualifications of mayor and aldermen.** The annual salary of a mayor of a city with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than seven thousand two hundred dollars ($7,200.00); the annual salary of a mayor of a city with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the said census, shall be not more than six thousand dollars ($6,000.00); the annual salary of a mayor of a city of the first class, having a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed five thousand Salaries of mayor and aldermen.



HeinOnline -- 1963 vol. I 279 1963

four hundred dollars ($5,400.00); and the annual salary of the mayor of a city of the second class must not exceed *three thousand two hundred dollars ($3,200.00);* and the annual salary of the mayor of a city of the third class must not exceed *one thousand seven hundred dollars ($1,700.00);* and each alderman in a city of the first class may be allowed and paid not exceeding *fifteen dollars ($15.00) per diem for each day of session,* to be fixed by ordinance; and aldermen of cities of the second and third class may be allowed and paid not exceeding *fourteen dollars ($14.00)* per diem for each day of session, to be fixed by ordinance, but no alderman of second and third class cities shall be paid for more than two (2) days' service during any one (1) month. The council of any town may by ordinance set compensation for a mayor and alderman at *five dollars ($5.00)* per meeting, but in no event shall they be paid to exceed three (3) meetings per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town."

Must be resident and freeholder.

Amending clause.

Section 2. That section 11-728, R. C. M., 1947, be, and the same is hereby amended to read as follows:

Salary of city treasurer.

"Section 11-728. **Salary of city treasurer.** The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, (except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed *five thousand dollars ($5,000.00),* in cities of the second class must not exceed *thirty-four hundred dollars ($3,400.00),* and in cities of the third class it must not exceed *eighteen hundred dollars ($1,800.00),* and in towns it must not exceed *fifteen hundred dollars ($1,500.00);* provided, however, that where a city of the third class, or a town shall own and operate a public utility or utilities such as water supply, waterworks, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may

Additional salary may be paid where city or town owns and operates public utility.



HeinOnline -- 1963 vol. I 280 1963

be paid additional salary or compensation to be fixed by ordinance and the duties of the treasurer with reference to the collection and safekeeping of the revenues derived from such public utilities shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine."

Approved March 2, 1963.

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## CHAPTER 143

An Act to Authorize the Recording of Locations of New Highways or Controlled Access Facilities by the State Highway Commission; Providing That Improvements, Buildings or Subdivisions Placed Upon Said Lands Within the Limits of Such Location May Not Be Taken Into Consideration for the Purpose of Assessing Compensation for Such Lands; Repealing All Acts or Parts of Acts in Conflict Herewith; and Providing That This Act Shall Be Effective From The Date of Its Passage and Approval.

*Be it enacted by the Legislative Assembly of the State of Montana:*

State highway commission shall have description and plan of new or controlled access highway or facility prepared and recorded in county clerk's office.

Section 1. **Description and plan of new or controlled access highway or facility—recording.** Whenever the state highway commission shall definitely establish the location, width and lines of any new or proposed highway, or declare any road, street or highway, as a controlled access facility, it shall cause the description and plan of any such highway or facility to be made, showing the center line of said highway and the established width thereof and attached thereto a certified copy of the resolution of the state highway commission establishing such location, and thereupon such description, plan and resolution shall be recorded in the office of the county clerk and recorder of the proper county in a separate book kept for such purposes, which shall be furnished to the county clerk and recorder of such county by the state highway commission at the expense of the state.

Section 2. **Buildings and improvements not compen-**



HeinOnline -- 1963 vol. I 281 1963

Buildings and improvements made after recording not compensable.

**sable—with exceptions.** No consideration, allowance or assessment of values or compensation shall be had in the purchase or condemnation of any buildings or improvements or subdivisions thereafter made upon the above described lands placed or erected within the limits of any such highway or facility, the location, width and lines of which have been established and recorded; provided, that the establishment of any highway location as set forth in section (1) hereof shall be ineffective after one year from the filing thereof if no action to condemn or acquire the property within said limits has been commenced within said time. This act shall not apply to crops or similar improvements planted on such lands. Such improvements shall be governed by Section 93-9913, Revised Codes of Montana for 1947.

One year limitation.

Repealing clause.

Section 3. That all acts or parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 4. That this act shall be in full force and effect from the date of its passage and approval.

Approved March 2, 1963.

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## CHAPTER 144

An Act to Amend Section 75-2401, R. C. M., 1947, Relating to the Re-Election of Teachers to Provide That a Board of Trustees May Terminate the Services of a Teacher Who Has Attained or Will Attain the age of Sixty-Five (65) Years and That a Board of Trustees May Continue to Employ a Teacher Until the Age of Seventy (70) Years.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 75-2401, R. C. M. 1947, is amended to read as follows:

Re-election of teachers automatic after fourth year unless trustees give written notice.

"75-2401. (1075) **Re-election of teachers — when automatic—acceptance.** After the election of any teacher or principal for the fourth consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall



HeinOnline -- 1963 vol. I 282 1963

by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

Hearing and reconsideration.

Written request.

Written notice of acceptance of re-election.

*The board of trustees of any school district or county high school may terminate the services for the ensuing year of any teacher who has attained, or will attain the age of sixty-five (65) years before the following first day of September, by giving notice in writing before the first day of April that his services will not be required for the ensuing year, provided, however, that a board of trustees may in its discretion continue to employ a teacher until the age of seventy (70) years has been attained."*

Trustees may terminate teacher services at age 65.

Must terminate at age 70.

Approved March 2, 1963.

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## CHAPTER 145

An Act to Amend Section 81-1408, R. C. M. 1947, Relating



HeinOnline -- 1963 vol. I 283 1963

to the Duties of the State Forester Concerning Lumber Cutting and Scaling.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 81-1408, R. C. M. 1947, is amended to read as follows:

Duties of state Forester to supervise timber cutting and keep records.

"81-1408. **Duties of state forester concerning lumber cutting—scaling.** It shall be the duty of the state forester to supervise all the timber before it is cut, to secure the most complete utilization of all forest products consistent with the current lumbering practice. It shall be his duty to instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and to fix and establish the standard practice in timber sales administration. He shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for all apparent defect, *or he* shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner decimal C. log scale. Records of *converting factors, units of measure and* the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the state forester is authorized to designate each tree to be cut and make a tree scale measurement of all trees to be sold."

Approved March 2, 1963.

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## CHAPTER 146

An Act to Amend Section 71-123, Revised Codes of Montana, 1947, Pertaining to Headstones for Deceased Veterans and the Expense of Setting Up Each Stone.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 71-123, Revised Codes of Montana, 1947, be amended to read as follows:



HeinOnline -- 1963 vol. I 284 1963

"71-123. **Duty of county clerk.** It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcibe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of Congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of *twenty* dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 71-121 for the burial expenses."

Duty of county clerk to keep record of deceased armed services personnel.

Application for headstone.

Expense.

Approved March 2, 1963.

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## CHAPTER 147

An Act Reorganizing the State Treasury Fund Structure and Revising State Fiscal Procedures for the Appropriation, Collection, Spending and Accounting of Public and Other Moneys; Amending Sections 79-201, 79-306, 79-304, 79-601, 79-603, 79-813, 79-1011, 79-1015, 79-1202, 79-1203, 79-1206, 79-1208, 79-1211, 79-1212, 79-1213, 79-1214, 79-1401, 79-1403, 62-305, 3-233, 3-408, 3-420, 3-510, 3-602, 3-704, 3-904, 3-1709, 3-1715, 3-1717, 3-1906, 3-1910, 3-2004, 3-2007, 3-2207, 3-2302, 3-2315, 3-2503, 3-2803, 44-509, 44-510, 44-514, 78-501, 78-503, 84-1901, 75-3612, 75-3613, 75-3614, 75-3615, 75-3616, 75-3618, 75-3619, 75-3620, 75-3621, 75-3413, 75-2521, 75-3503, 75-3505, 75-4802, 82-3104, 75-5101, 69-3015, 11-1920, 11-1921, 15-2024, 40-2717, 82-1507, 82-1505, 82-1511, 82-1516, 82-1517, 89-116.1, 89-120, 89-402, 93-2011, 93-2014, 93-2015, 93-2020, 44-410, 44-412, 82-503, 46-105, 84-5212, 46-609, 46-704, 46-707, 46-804, 46-806, 46-911, 52-322, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915, 84-5214, 84-2708, 3-2704, 46-904, 46-1006, 46-803, 84-5211, 91-502, 91-504, 91-505, 91-506, 91-507, 91-512, 91-523, 91-526, 66-1237, 69-3404, 66-1307, 66-1311, 66-1314, 66-2333, 66-2104, 66-2106, 66-2203, 66-2204,



HeinOnline -- 1963 vol. I 285 1963

66-1008, 66-1009, 66-607, 66-603, 66-608, 66-2503, 66-1527, 66-809, 82-702, 83-709, 66-407, 66-408, 66-108, 66-109, 66-513, 66-2403, 66-2407, 66-1405, 66-1410, 66-904, 66-906, 66-909, 66-919, 66-925, 66-2604, 66-2605, 66-2606, 46-2306, 46-2331, 27-409, 27-417, 26-121, 60-145, 60-147, 82-308, 78-302, 92-116, 92-119, 92-820, 69-1516, 92-840, 92-902, 92-1005, 92-1119, 92-1334, 92-1358, 92-120, 92-1101, 92-1105, 92-1102, 92-1103, 92-1106, 92-1110, 92-1114, 92-1115, 92-1116, 92-1122, 92-1123, 92-1112, 92-1113, 92-1302, 92-1343, 92-1357, 11-2030, 11-2025, 11-2026, 11-2028, 92-709A, 75-2708, 68-405, 59-1103.1, 59-1104, 59-1105, 31-201, 31-205, 31-206, 31-209, 31-210, 87-111, 87-112, 87-133, 84-5621, 71-901, 4-229, 32-1619, 84-1840, 84-1802, 28-111, 81-1410, 28-123, 28-124, 81-1601, 1-501, 84-1819, 5-910, 75-3701, 81-1001, 81-1005, 75-1315, 19-121, 53-122, 94-35-152.13, 80-720, 38-210, 80-322, 66-1812, 28-304, 75-706, 75-807, 75-811, 75-723, 89-401, 27-313, R. C. M. 1947; and Repealing Sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501, through 79-505, 3-203, 78-203 through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701, through 78-727, 78-728, through 78-736 Enacted as Sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016, 81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231, 80-115, 80-747, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana*:

"Treasury fund structure act."

Section 1. **Title and purpose of act.** This act may be cited as the "Treasury Fund Structure Act." The purpose of this act is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislative assembly with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect governmental costs and revenues.

Fund structure—state treasury

Secion 2. **Fund Structure.** There are in the state treasury only the following funds:

General fund.

(1) **General fund.** The general fund consists of all



HeinOnline -- 1963 vol. I 286 1963

moneys deposited in the state treasury which are available to defray the general costs of state government and which do not fall into one of the categories enumerated below.

(2) **Earmarked revenue fund.** The earmarked revenue fund consists of moneys from state sources deposited in the state treasury which are specifically earmarked by law for the purpose of defraying the costs of a particular agency, program, or function of state government. Earmarked revenue fund.

(3) **Sinking fund.** The sinking fund consists of moneys deposited in the state treasury for the payment of principal and interest, and the accumulation of reserves for bonded or other indebtedness. Sinking fund.

(4) **Federal and private revenue fund.** The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government. Federal and private revenue fund.

(5) **Federal and private grant clearance fund.** The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations or units of local government. When the final disposition of expendable federal or private moneys is unknown at the time of receipt, they shall be deposited in the federal and private grant clearance fund; but those moneys to be used for the operation of state government shall be transferred to the federal and private revenue fund prior to disbursement. Federal and private grant clearance fund.

(6) **Bond proceeds and insurance clearance fund.** The bond proceeds and insurance clearance fund consists of Bond proceeds and insurance clearance fund.

(a) Moneys deposited in the state treasury obtained from the sale of bonds, certificates of indebtedness or similar obligations.

(b) Moneys indemnifying the state for loss or damage of property.

(7) **Revolving fund.** (a) The revolving fund consists of moneys used to Revolving fund.



HeinOnline -- 1963 vol. I 287 1963

(i) Defray reimbursable expenditures, and

(ii) Supply working capital for enterprise-type operations.

(b) An appropriation of a specific amount from the revolving fund is not a limitation on total expenditures for the period for which the apropriation is made, but is the maximum amount that may be withdrawn at any given time.

Trust and legacy fund.

(8) **Trust and legacy fund.** The trust and legacy fund consists of moneys deposited in the state treasury which the state administers as a trustee pursuant to a law or a trust agreement restricting the use of the money for a specified purpose and prohibiting the expenditure of the principal for a period of at least five (5) years.

Agency fund.

(9) **Agency fund.** The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent, and includes, but not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature.

Section 3.

Definitions supercede all others.

(1) It is the intent of the legislative assembly that the definitions in section 2 of this act supersede all previous definitions of public funds which are inconsistent with the definitions found in this act.

Future moneys—subfund.

(2) Any laws enacted in the future, or any contracts entered into in the future in pursuance of law, that require the segregation of moneys in the state treasury by means of a separate treasury fund, shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by section 2 of this act.

State treasurer not prohibited from establishing suspense accounts and investment funds.

Section 4. The enumeration of treasury funds in section 2 of this act does not prohibit the state treasurer from establishing and maintaining

(1) Clearance or suspense accounts for the purpose of paying refunds, for the purpose of grouping payments from different funds or accounts prior to disbursement,



HeinOnline -- 1963 vol. I 288 1963

or for the purpose of conveniently processing receipts before crediting the proper fund.

(2) Investment funds authorized under the "Unified Investment Plan."

Specific accounts—state controller.

Section 5. **Creation and abolition of new accounts.** Moneys deposited in each fund except the general fund shall be segregated by the state controller by specific accounts based on source, function or department. When moneys deposited in the state treasury cannot logically be credited to an existing acount, or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the controller, in his discretion, may create new accounts consistent with the definitions in section 2 of this bill; however, the controller shall create as few new accounts as practicable. The controller shall periodically examine all accounts, and shall abolish or consolidate inactive or unnecessary accounts.

Fund and account records—duties of treasurer.

Section 6. **Maintenance of fund and account records —accounting procedures.**

(1) The state treasurer shall record receipts and disbursements for treasury funds, and shall maintain fund records in such a manner as to reflect the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual subfunds within the sinking fund, bond proceeds and insurance clearance fund, and trust and legacy fund in such a manner as to reflect the total cash and invested balance of each subfund. When necessary to meet federal or other requirements that moneys be segregated in the treasury, the state treasurer may establish subfunds within any funds listed in section 2 of this act.

Duties of controller.

(2) The state controller shall record receipts and disbursements for treasury funds and for accounts within treasury funds, and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The controller shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.



HeinOnline -- 1963 vol. I 289 1963

Moneys paid out—on appropriation.

Section 7. **Appropriation and disbursement of moneys from the treasury.** (1) Moneys deposited in the general fund, the earmarked revenue fund, the revolving fund, and the federal and private revenue fund, with the exception of trust income, shall be paid out of the treasury only on appropriation made by law.

Under laws and contracts.

(2) Moneys deposited in the federal and private grant clearance fund, the sinking fund, the bond proceeds and insurance clearance fund, the trust and legacy fund and the agency fund may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

Amending clause.

Section 8. Section 79-201, R. C. M. 1947, is amended to read as follows:

General fiscal duties—treasurer.

"Section 79-201. **State treasurer—general fiscal duties.** It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To file and keep the certificates of the state auditor delivered to him when moneys are paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor *and state controller* a duplicate receipt showing the amount, the sources from which the money accrued, and the funds *and accounts* into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants out of the funds upon and in the order in which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the state controller, on the last day



HeinOnline -- 1963 vol. I 290 1963

of each month, the amount disbursed for the redemption of bonds and in payment of warrants during the month; which report must show the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subjects relating to the duties of his office.

10. To report to the governor at the time prescribed in section 59-702, of this code the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years; and to make a semi-annual report to the governor as provided in section 59-705.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge such other duties as may be imposed upon him by law."

Amending clause.

Section 9. Section 79-306, R. C. M. 1947, is amended to read as follows:

State treasurer is treasurer for state agencies.

"Section 79-306. **State treasurer as treasurer of state agencies — deposits of moneys.** (1) The state treasurer is hereby designated the treasurer of each and every state board, commission, bureau, department and state institution, now existing or hereafter to be created or established. All departments of the state government located at the capital shall deposit with the state treasurer daily all moneys, credits, evidences of indebtedness and securities received.

Daily deposits at capitol.

Daily deposits in approved banks.

(2) All state boards, commissions, bureaus, departments and state institutions not located in the capitol shall deposit daily all moneys, credits, evidences of indebtedness and securities in banks located in the city or town in which such boards, commissions, bureaus, departments and state institutions are situated, provided there is a qualified bank in such city or town, to be designated by the state treasurer with the approval of the state depository board, or with the state treasurer. Such banks shall furnish indemnifying bonds or pledge securities in amounts sufficient to cover all such deposits at all times,

Security.

Deposits in name of state treasurer.



HeinOnline -- 1963 vol. I 291 1963

and such deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and such deposits shall draw interest as other state moneys. Indemnifying bonds and pledged securities shall be subject to the approval of the state depository board."

Amending clause.

Section 10. Section 79-304, R. C. M. 1947, is amended to read as follows:

State depository board to invest sinking fund money.

"Section 79-304. **State depository board to invest money in state sinking funds.** Whenever there is any money in *the* sinking fund for any state bonds or other obligations issued by the state of Montana or any agencies thereof, either now existing or hereafter created and established, which is not required for the immediate payment of principal or interest of any state bonds or other obligations issued by the state of Montana or any agencies thereof, or which cannot be used for the payment and redemption of such bonds or obligations outstanding because of the same not being then redeemable under the option provisions contained therein, the state depository board is hereby directed and empowered to cause the same to be invested by the state board of land commissioners as part of the short term investment fund; provided, however, that none of such moneys will be invested in bonds or securities except as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for payment of principal and interest, or the time when such moneys can be used for such purpose because of the optional date provided for in the bonds or obligations having arrived."

Amending clause.

Section 11. Section 79-601, R. C. M. 1947, is amended to read as follows:

Annual perpetual appropriation for support of state institutions.

"Section 79-601. **Support of state institutions.** For the support and endowment of each and every of the state institutions of the state of Montana now existing or hereafter to be created there is annually and perpetually appropriated respectively:

Treasurer shall deposit income and moneys in proper fund.

1. The income from all permanent endowments, and from all land grants as provided by law. All moneys received or collected by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except



HeinOnline -- 1963 vol. I 292 1963

such as may have been heretofore pledged to secure the payment of principal and interest of bonds issued in connection with the construction of buildings, or which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the *proper* fund."

Amending clause.

Section 12 Section 79-603, R. C. M. 1947, is amended to read as follows:

Controller may permit state institution to retain certain moneys.

"Section 79-603. **State institutions may retain certain moneys, when.** The state *controller may in his discretion* permit any state institution to retain in its possession, under such conditions as the *state controller* may prescribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state *controller* may cancel such permission and require the deposit of any or all such funds with the state treasurer at *his* pleasure; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such funds and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories."

Treasurer shall designate depositories.

Amending clause.

Section 13. Section 79-813, R. C. M. 1947, is amended to read as follows:

Treasurer shall sell escheated property at public auction.

"Section 79-813. **Sale of property in escheated estates—disposal of proceeds.** All stocks, bonds, securities, personal property, and effects now held or hereafter received by the state treasurer, and which belong to certain estates that have escheated to the state of Montana, shall be disposed of by the state treasurer at public auction at his office in the capitol. The state treasurer shall cause notice of such auction to be published in one (1) newspaper published in the city of Helena in two (2) issues during the period of two (2) weeks prior to such auction sale, stating the time and place of sale, and giving a list of all such stocks, bonds, securities, personal property and effects to be sold, reserving the right to reject any or all bids. The state treasurer shall credit the proceeds of such sale to the *proper* fund, making

Publication—notice of sale.

Proceeds credited to proper fund—accounting.



HeinOnline -- 1963 vol. I 293 1963

proper accounting to the various estates of the amounts received."

Amending clause.

Section 14. Section 79-1011, R. C. M. 1947, is amended to read as follows:

Unexpended appropriations—return to proper funds and accounts.

"Section 79-1011. **Disposal of unexpended appropriations.** All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds *and accounts* from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made."

Amending clause.

Section 15. Section 79-1015, R. C. M. 1947, enacted as Section 4, Chapter 158, Laws of 1959, is amended to read as follows:

Governor shall submit budget to legislators.

"Section 79-1015. **Submission of budget to legislature—form—contents.** The governor shall, following the receipt of the preliminary budget from the director of the budget, have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, and shall be set up in three (3) parts, the nature and contents of which shall be as follows:

Part 1—Budget message—financial policy.

Part 1 shall consist of a budget message by the governor which shall outline the financial policy of the state government for the ensuing biennium and shall describe in connection therewith the important features of the

Budget summary.

financial plan; it shall also embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress.

Explanatory matter.

The general budget summary shall be supported by explanatory schedules or statements, classifying both expenditures and income contained therein by organization units, *accounts* and funds.



HeinOnline -- 1963 vol. I 294 1963

Estimates, comments, recommendations of governor-elect.

If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed expenditures and anticipated revenue.

Part 2— Detailed budget estimates.

Part 2 shall set forth the detailed budget estimates, both of expenditures and revenues of each department, institution and agency of the state in the following manner:

Revenues— classified.

1. The revenues from all sources including appropriations for each fiscal year of the last completed biennium, for the completed fiscal year of the current biennium, and appropriations and estimated revenue from other sources for the current fiscal year in progress. Revenue shall be classified by organization units, sources, *accounts* and funds.

Expenditures— classified.

2. Expenditures during each fiscal year of the last completed biennium, expenditures for the completed firscal year of the current biennium and estimated expenditures for the current fiscal year in progress. These expenditures shall be classified by organization units, objects, *accounts* and funds.

Amount approved by governor.

3. The amount approved by the governor as necessary for the carrying on of the work of each department. office or institution itemized as to the purpose for each fiscal year of the ensuing biennium.

Statement of bonded indebtedness.

4. Statements of the bonded indebtedness of the state government showing the debt redemption requirements, the debt authorized and unissued and the condition of the sinking funds *and accounts.*

Statement— cash balances.

5. A statement of the cash balances on hand in each of the *accounts and* funds at the close of each of the two last completed fiscal years.

Further recommendations.

6. A statement containing further recommendations of the governor should he deem it necessary.

Part 3— Proposed budget bill.

Part 3 shall include a proposed budget bill, authorizing by departments, institutions and agencies, *by accounts* and



HeinOnline -- 1963 vol. I 295 1963

by funds, all expenditures for each fiscal year of the ensuing biennium, and must be accompanied by detailed and specific recommendations as to new sources of revenue, if necessary, to balance and to finance the budget. If recommendations for new sources of revenue are submitted, estimates of revenue to be realized from such new sources must also be submitted."

Amending clause.

Section 16. Section 79-1202, R. C. M. 1947, is amended to read as follows:

State board of land commissioners must invest trust and legacy fund.

"Section 79-1202. *Moneys* **to be invested according to unified plan.** 1. The state board of land commissioners is hereby authorized and required to invest the Montana trust and legacy fund subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008, inclusive.

Moneys board must invest in long term investment fund.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: *Moneys administered by* the Montana highway patrolmen's retirement *board* in excess of twenty-five thousand dollars ($25,000.00); *moneys administered by* the public employees' retirement *board; moneys administered by* the industrial accident *board;* all *moneys* subject to investment as designated by the teachers' retirement board; *moneys* designated as available by the Montana fish and game commission and all other *moneys* designated by statute. Moneys in the long term investment fund may be invested as follows:

Aproved investments.

U.S. obligations.

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

Bonds.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land ad-



HeinOnline -- 1963 vol. I 296 1963

jacent to the capitol building; in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; the purchase of all such investments to be subject to the discretion of the board. Warrants.

(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations. Debentures.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United States government or an agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages. All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased. First mortgages.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in *the* sinking fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any Montana highway patrolmen's retirement *moneys* less than twenty-five thousand dollars ($25,000.00) as directed by the Montana highway patrolmen's retirement board and any other *moneys* designated by statute to be so invested or any *moneys* in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which *moneys* is requested by the officer, or officers or governing body and which *moneys are* subject to investment. The *moneys* in the short term investment fund may be invested as follows: Moneys board must invest in short term investment fund. Approved investments.



HeinOnline -- 1963 vol. I 297 1963

State warrants, U.S. treasury obligations.

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

Bonds.

Warrants.

(b) Any sinking fund and any other *moneys* may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in *the* sinking fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for the payment of principal and interest

Securities and cash kept separate.

All securities purchased and all cash on hand for each *account or subfund* shall be kept separate in the short term investment fund and all interest collected shall be credited to the *account or subfund* for which the securities were purchased.

Board may employ financial expert.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there shall not be paid for such services an amount in excess of one thousand dollars ($1,000.00) in any one fiscal year."

Amending clause.

Section 17. Section 79-1203, R. C. M. 1947, is amended to read as follows:

Departments shall request investment according to unified investment plan.

"Section 79-1203. **Departments to request investment of *moneys* according to unified investment plan.** Except as otherwise provided, any department of the government of the state of Montana, state board, commission, bureau, institution, office or officer, which has under its or his administration any *moneys* subject to investment, must have such *moneys* or any part thereof subject to investment invested by the state board of land commissioners as part of the Montana trust and legacy fund,



HeinOnline -- 1963 vol. I 298 1963

the long term investment fund or the short term investment fund depending on the nature of the *moneys* and the time when the principal invested may be required for the purpose for which it was accumulated. The said board is hereby authorized and required to invest and administer the *moneys* for which such request has been made."

Amending clause.

Section 18. Section 79-1206, R. C. M. 1947, is amended to read as follows:

Investment—Montana trust and legacy fund.

"Section 79-1206. **Investment of *moneys* — supreme court supervision — duty of land commissioners.** All *moneys* invested as the Montana trust and legacy fund as provided in article XXI of the constitution, shall be invested as one (1) common fund and shall be invested in the same kinds of securities as the constitution and the statutes prescribe for the investment of the other *moneys* under the administration of the state board of land commissioners, and also subject to the special limitations of the said article XXI. The entire investment of the Montana trust and legacy fund shall be subject to the supervision of the justices of the supreme court as provided in section 17 of the said article. The commissioner of state lands and investments shall perform the same duties and exercise the same powers with regard to the investment administration of the *moneys* under the unified investment plan as he performs with regard to the other investments made by the state board of land commissioners."

Justices of supreme court shall supervise.

Amending clause.

Section 19. Section 79-1208, R. C. M. 1947, is amended to read as follows:

Treasurer's account of funds.

"Section 79-1208, **Treasurer's account of funds—auditor's account.** The state treasurer shall keep separate *each* account *and subfund* which is invested and administered according to the unified investment plan and shall also keep an account of the total of *each investment* fund and of all the investments belonging to such fund."

Amending clause.

Section 20. Section 79-1211, R. C. M. 1947, is amended to read as follows:

Annual transfer of interest collected—last day of December—subfunds.

"Section 79-1211. **Annual transfer of interest collected.** On the last day of December each year the interest collected shall be credited pro rata to each and every



HeinOnline -- 1963 vol. I 299 1963

*subfund* then constituting the Montana trust and legacy fund that was in the keeping of the state on January, based on the total thereof on that date, and shall be added to each such *subfund,* or held available for payment, according to the provisions of article XXI of the constitution and of the statutes and other valid provisions applicable thereto. If any *subfund* is larger or smaller on December 31, than on January 1 of the same year, then the average of the amounts on these two (2) dates shall be the basis for calculating the interest to be credited to that *subfund.* The interest on all other *subfunds* shall be credited to each *subfund* as earned by each such *subfund.*"

Amending clause.

Section 21. Section 79-1212, R. C. M. 1947, is amended to read as follows:

Subfund subject to payment when due.

"Section 79-1212. **Payments from Montana trust and legacy fund.** The principal, and any part thereof, of each and every *subfund* constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the constitutional and statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular *subfund* arises."

Amending clause.

Section 22. Section 79-1213, R. C. M. 1947, is amended to read as follows:

Treasurer shall send statement of payment due to board.

"Section 79-1213. **Payments made on order of board —annual statement of treasurer.** Whenever any payment is required to be made of interest or principal from any fund administered according to the unified investment plan, which payment is not subject to the order of any department of the government of the state, state board, commission, bureau, institution, office or officer, other than the state board of land commissioners, the state treasurer shall send a statement in duplicate to such board of the payment or payments to be made showing all essential facts relating thereto. The board shall then issue orders *for warrants to be drawn* for all payments approved by it.

Board shall issue order for warrant.

Treasurer shall submit statement of interest payments to board.

During January of each year and at such other times as may be required the state treasurer shall submit to the board a statement covering all such interest payments to be made for the preceding year and all such payments



HeinOnline -- 1963 vol. I 300 1963

from principal to be made at that time giving all necessary information relating thereto. The board shall then issue orders *for warrants to be drawn* for all payments approved by it."

Board shall issue orders for warrants.

Section 23. Section 79-1214, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 79-1214. **Limitation on payment from** *treasury.* No order or warrant shall ever be issued upon any *subfund, account or fund* for a larger amount than the sum total of the particular *subfund, account or* fund to which it applies, and if such order or warrant is issued, the state treasurer shall refuse to pay the same and, *in the case of subfunds, accounts or funds for which the treasurer maintains balances, he* shall be personally liable under his official bond for the entire overdraft resulting from such payment if made."

No order or warrant shall exceed subfund account or fund.

Treasurer liable for overdraft.

Section 24. Section 79-1401, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 79-1401. **Monthly deposit of moneys received from permanent** *grants* **of state educational institutions.** All moneys received from the investment of *grants* of a state institution and all money received from the leasing of lands granted to a state institution shall, at the close of each calendar month, be deposited with the state treasurer of Montana for each of such institutions, to the credit of *the federal and private revenue fund.*"

Moneys received from grants—deposit monthly in federal and private revenue fund.

Section 25. Section 79-1403, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 79-1403. **Income and interest** *moneys* **to be first exhausted in payment of claims.** In the payment of claims presented by a state institution entitled to interest and income from land grants or *moneys* arising therefrom, no warrant shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim until interest and income *moneys,* insofar as *they are* available for the payment of the items in the claim, *are* exhausted."

Income and interest shall be first exhausted in payment of claims by state institution.

Section 26. Section 62-305, R. C. M. 1947, is amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. I 301 1963

Commission has power to levy and collect reasonable fees—deposit in general fund.

"Section 62-305. *Disposal of* **fees and charges.** The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable. All moneys derived from the activities of the commission, *except* from conditional gifts, donations, bequests and endowments, shall be deposited in the state treasury to the credit of the *general* fund." *Moneys derived from conditional gifts, donations, bequests and endowments may be deposited in the federal and private revenue fund.*

Gift moneys—deposit in federal and private revenue fund.

Amending clause.

Section 27. Section 3-233, R. C. M. 1947, is amended to read as follows:

Fees paid to commissioner of agriculture.

"Section 3-233. **Fees — disposition.** All fees and other charges authorized by law to be fixed by the commissioner of agriculture for the inspection, grading, weighing and protein-testing of grain shall be by said commissioner kept as near the actual cost of such services as is possible. All such fees and charges shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the *earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used* to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved *as provided by law.* No funds of the state shall be used by the commissioner in carrying out such services, except moneys presently appropriated."

5%—deposit in general fund.

95%—deposit in earmarked revenue fund—use.

Amending clause.

Section 28. Section 3-408, R. C. M. 1947, is amended to read as follows:

Fees for inspectors.

"Section 3-408. **Fees for inspectors.** The commissioner shall from time to time fix the fees or compensation of inspectors for their services. Such fees or compensation shall be based upon a certain sum per bushel of the grain so inspected."

Amending clause.

Section 29. Section 3-420, R. C. M. 1947, is amended to read as follows:

Fees for inspection.

"Section 3-420. **Expenses for administration of act—how paid—fees for inspection.** The expense of the



HeinOnline -- 1963 vol. I 302 1963

administration of this act shall be paid by the owners of the grain, and the fee collected at the time of inspection and sealing. The amount so paid shall be stated in the certificate. The fee for such inspection shall not exceed one-half cent per bushel, except that when the amount of grain offered for inspection by a single applicant is found to be less than one thousand bushels the minimum fee shall be for one thousand bushels. Such fees shall be paid to the commissioner and deposited with the state treasurer *in the earmarked revenue fund.*"

Deposit in earmarked revenue fund.

Section 30. Section 3-510, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 3-510. **Fees for protein tests—disposal of proceeds.** The commissioner of agriculture shall fix the fees for testing grain for protein content, and such fees shall be collected by the analyst when tests are made, and remitted to the commissioner of agriculture once each month, and deposited with the state treasurer in *the earmarked revenue fund.*"

Fees for protein tests.

Deposit in earmarked revenue fund.

Section 31. Section 3-602, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 3-602. **Farm storage public warehouseman defined—license—fee—disposal.** All persons, firms, corporations or associations, now or hereafter engaged in the business of buying, selling or storing grain in the state of Montana, and licensed by the commissioner to conduct such business, may, upon application in such form as shall be described by the commissioner, receive a license as farm storage public warehousemen in compliance with the provisions of this act, and the rules and regulations of the commissioner. All licenses issued under the provisions of this section shall run for one (1) year, and expire on May 31st of each year. The license fee, which must accompany the application is hereby fixed at five dollars ($5.00) for each warehouse operated, except that where more than one (1) warehouse operated by the same person, firm, corporation or association is located in one (1) place only one (1) license need be applied for. The fees collected under the provisions of this act shall be paid into the state treasury and credited to the *general fund.*"

Farm storage public warehouseman.

License.

Fee.

Deposit in general fund.



HeinOnline -- 1963 vol. I 303 1963

Amending clause.

Section 32. Section 3-704. R. C. M. 1947, is amended to read as follows:

Bean warehousing.

"Section 3-704. **License required of persons warehousing beans—fee—disposal of moneys—expiration date.** All persons engaged in the business of buying and selling at wholsale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale or storage either within or without the state of Montana shall, before engaging in such business, procure a license from the commissioner and shall pay a license fee to the department of agriculture of Montana in the sum of fifteen dollars ($15.00), which shall be deposited with the treasurer of the state of Montana and credited to the *general* fund. Said licenses shall be renewed annually and the prescribed fee shall be paid annually. All licenses shall be issued for the fiscal year or fraction thereof and ending June 30th next following."

License.

Fee.

Deposit in general fund.

Amending clause.

Section 33. Section 3-904, R. C. M. 1947, is amended to read as follows:

Filing fee—deposit in general fund.

"Section 3-904. **Filing fee of commissioner—use of funds.** The farm storage commissioner shall collect the sum of fifty cents for filing the certificate in his office and the funds so derived shall be *deposited in the state treasury to the credit of the general fund."*

Amending clause.

Section 34. Section 3-1709, R. C. M. 1947, is amended to read as follows:

Analyses of commercial fertilizer—report to commissioner.

"Section 3-1709. **Report of analyses.** All such analyses of commercial fertilizer, as required by this act, shall be reported to the commissioner of agriculture of the state of Montana. It shall be the duty of the commissioner of agriculture to enforce this act and for that purpose, he shall make all proper and necessary rules and regulations."

Amending clause.

Section 35. Section 3-1715, R. C. M. 1947, is amended to read as follows:

Registration—brand and grade.

"Section 3-1715. **Registration.** (a) Each brand and grade of commercial fertilizer shall be registered before being offered for sale, sold or distributed in this state.

Application.

The application for registration shall be submitted to the commissioner on a form furnished by the commissioner and shall be accompanied by a fee of thirty-five



HeinOnline -- 1963 vol. I 304 1963

dollars ($35.00) per brand and ten dollars ($10.00) per grade *which shall be deposited in the state treasury to the credit o fthe general fund.* Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

Fees—deposit in general fund.

Required information.

(1) The brand and grade.

(2) The guaranteed analysis.

(3) The sources from which the nitrogen, phosphoric acid and potash are derived.

(4) The commissioner may require a manufacturer of commercial fertilizer to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.

(5) The name and address of the registrant.

(b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.

One registration.

(c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.

Uniform content.

(d) Custom blended fertilizers individually compounded to a buyer's specifications and manufactured, sold and delivered on the premises where manufactured, direct to the consumer, shall be exempt from the registration requirements set forth in paragraph (a) of this section. Such fertilizer shall bear a tag or invoice stating the composition of the material by weight or percentage of ingredients used in place of the labeling requirements set forth in section 3-1716. A custom blended fertilizer can be resold only when registered and labeled as a mixed fertilizer. All ingredients shall be subject to the payment of the inspection fees as set forth in section 3-1717 (a) except those materials brought to the manufacturer by the customer for custom blending."

Exemption—custom blended fertilizers—requirements.

Inspection fees.

Section 36. Section 3-1717, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 3-1717. **Inspection fees.** (a) There shall be paid to the commissioner for all commercial fertilizers offered for sale, sold, or distributed in this state an in-

Inspection fees—commercial fertilizers.



HeinOnline -- 1963 vol. I 305 1963

spection fee at the rate of fifteen cents (15¢) per ton: Provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall *be deposited in the state treasury to the credit of the general fund.* On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be no inspection fee. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee shall apply only to that portion sold in packages of over ten (10) pounds.

Deposit in general fund.

Statement.

(b) Payment of the inspection fee shall be evidenced by a statement made in due form of law, of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the commissioner.

Every registrant who distributes commercial fertilizer in this state shall:

Semi-annual affidavit of net tons distributed.

File an affidavit semiannually within thirty (30) days after each January 1 and each July 1 of each year setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six-months' (6) period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee amounting to ten (10) per cent (minimum ten dollars ($10.00)) of this amount due shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant."

Collection fee.

Amending clause.

Section 37. Section 3-1906, R. C. M. 1947, is amended to read as follows:

"Section 3-1906. **Administration.** It is hereby made the duty of the commissioner of agriculture of the state of Montana to administer and enforce this act, and for such purpose he is hereby empowered to make all proper necessary rules and regulations, and he is also empowered to and he shall fix the fees for inspection and weighing of mustard seed and such fees shall be a lien upon such mustard seed until paid, and such fees shall be collected by the commissioner of agriculture or his duly authorized

Inspection fees—mustard seed.



HeinOnline -- 1963 vol. I 306 1963

representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in *the earmarked revenue fund.* All operating expenses of this act shall be paid *from such fees.*"

Deposit in earmarked revenue fund.

Section 38. Section 3-1910, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 3-1910. **Disposal of funds.** All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the *general fund.*"

License fees—deposit in general fund.

Section 39. Section 3-2004, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 3-2004. **Fee payable for each registered brand or formula—disposition of fee—feed sold in bulk.** Each and every manufacturer, importer, jobber, firm, association, corporation, or person selling or distributing any commercial feeds as defined in section 3-2001 shall pay annually to the commissioner a registration fee of ten dollars ($10.00) for each brand or feed formula registered. In the case of mixed feeds containing more than a total of ten per cent (10%) of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purpose of correcting mineral deficiencies in rations for animals or poultry, and containing mineral ingredients generally regarded as dietary factors essential for normal nutrition, the annual registration fee shall be fifteen dollars ($15.00). All such fees and charges so collected shall be paid to the commissioner and by him deposited with the state treasurer *to the credit of the general fund.* When feed is sold in bulk or in packages belonging to the purchaser, the manufacturer, importer, jobber, firm, association, corporation or person so selling shall furnish the purchaser with a card or cards upon which appears the statement required by the provisions of section 3-2002.

Registration fees—commercial feeds.

Deposit in general fund.

The registration fee and tax as provided in this section shall not apply to any feed mixed according to a formula furnished by a consumer or purchaser nor to the grains furnished by the consumer or purchaser which may be ground for his own personal use. Any

Exception.



HeinOnline -- 1963 vol. I 307 1963

feed mixed to a formula furnished by a consumer or purchaser which finds general use in the community shall be registered as a brand and subject to all provisions of this act."

Amending clause.

Section 40. Section 3-2007, R. C. M. 1947, is amended to read as follows:

Chemists may employ agents to inspect, sample and analyze commercial feeds.

"Section 3-2007. **Chemist may employ necessary agents—salaries, how paid.** The chemist, under the supervision of the director of the agricultural experiment station of Montana state college at the request of the commissioner of agriculture may employ such agents as are deemed necessary to each year inspect, sample, and make analysis of commercial feeds as provided in this act, and the salaries and necessary expenses of such agents, including chemicals, supplies, equipment, and traveling expenses, together with the costs of publishing the reports of such inspections and analyses shall be paid out of moneys *appropriated to the commissioner of agriculture for the administration of this act.* Said salaries and expenses are to be paid upon verified claims filed with and audited by the commissioner of agriculture, and by him presented for allowance in the same manner as all claims contracted for and in behalf of the state of Montana."

Appropriation for salaries and expenses.

Amending clause.

Section 41. Section 3-2207, R. C. M. 1947, is amended to read as follows:

Fees—deposit in general fund.

"Section 3-2207. **Disposition of fees.** *All* fees collected under this act shall be deposited in the state treasury to the credit of the general fund."

Amending clause.

Section 42. Section 3-2302, R. C. M. 1947, is amended to read as follows:

License fees—dairy division—deposit in general fund.

"Section 3-2302. **Remittance of fees.** All license fees shall be remitted to the department of agriculture, dairy divison, who shall *deposit them in the state treasury to the credit of the general fund.*"

Amending clause.

Section 43. Section 3-2315, R. C. M. 1947, is amended to read as follows:

License fees—eggs—deposit in general fund.

"Section 3-2315. **Disposal of license fees.** All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the *general fund.*"



HeinOnline -- 1963 vol. I 308 1963

Section 44. Section 3-2503, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 3-2503. **Procurement and use of labels—information concerning—disposal of moneys.** (a) The commissioner may cause to be made, printed, or otherwise prepared, from time to time, such quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he may furnish such labels, tags, and seals at reasonable prices to any producer, processor, packer or dresser who has availed himself of the said continuous official inspection service. Nothing in this act, however, shall be construed to preclude the commissioner from permitting, under the rules and regulations by him prescribed, any such producer, processor, packer or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon his own product, or to print, stamp or otherwise placed or cause to be placed the Montana quality label, upon such products or containers thereof which have been subject to continuous inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the commissioner, may from time to time determine. (b) The commissioner is further authorized, in cooperation with the United States department of agriculture and/or otherwise, to make use of any available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize the use thereof. (c) All moneys derived from the furnishing of said labels, tags, and seals, or from permitting the use in any other manner of the Montana quality label shall *be deposited in the state treasury to the credit of the general fund.*"

Commissioner may have printed quality labels—sale.

Dissemination of information—quality label.

Deposit in general fund.

Section 45. Section 3-2803, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 3-2803. *Administration of trust assets.* Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the commissioner of agriculture, and paid by him to the state treasurer for deposit in *the federal and private grant clearance fund and used* for expenditure

Trust assets—deposit in federal and private grant clearance fund—use.



HeinOnline -- 1963 vol. I 309 1963

or obligation by the department of agriculture for the purpose of section 3-2802, or for use for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may from time to time be agreed upon between the commissioner of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499."

Amending clause.

Section 46. Section 44-509, R. C. M. 1947, is amended to read as follows:

Librarians—salary.

"Section 44-509. **Salary of librarian and assistant librarians.** The annual salary of the librarian and of each assistant librarian shall be fixed by the board of trustees."

Amending clause.

Section 47. Section 44-510, R. C. M. 1947, is amended to read as follows:

Gifts and donations—deposit in earmarked revenue fund.

"Section 44-510. *Disposal of gifts and donations.* All gifts, donations, legacies and bequests of moneys of the society or to the state of Montana for the use and benefit of the society and all money income from any other source *shall be deposited in the earmarked revenue fund.*"

Amending clause.

Section 48. Section 44-514, R. C. M. 1947, is amended to read as follows:

Librarian authorized to pay freight charges.

"Section 44-514. **Transportation of books—payment of charges.** The librarian is authorized to pay reasonable freight, express, and mail charges upon books or other articles sent to the library by the general, state, or foreign governments, or private parties."

Amending clause.

Section 49, Section 78-501, R. C. M. 1947, is amended to read as follows:

Capitol building land grant revenue—deposit in federal and private revenue fund.

"Section 78-501. *Disposal of revenue.* The state treasurer is hereby authorized and instructed to *deposit in the federal and private revenue fund* all revenue from the capitol building land grant."

Amending clause.

Section 50. Section 78-503, R. C. M. 1947, is amended to read as follows:

Funds dedicated to construction of capitol buildings.

"Section 78-503. **Dedication of funds.** The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions, thereto,



HeinOnline -- 1963 vol. I 310 1963

in accordance with the provisions of section 12 of the enabling act."

Section 51. Section 84-1901, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 84-1901. *Disposition of* **moneys from certain designated license and other taxes.** The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of automobile drivers' license fees under section 1741.11, electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under Chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy-five per centum (75%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, the remaining twenty-five per centum (25%) thereof to be deposited to the credit of the *earmarked revenue fund for state equalization aid to the public schools of Montana* in order to comply with the provisons of section 1a of article XII of the constitution of the state of Montana; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana beer act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the state liquor control act, being sections 4-101 to 4-237."

Moneys from designated licenses and taxes—deposit to earmarked revenue fund for state equalization aid to public schools.

Deposit in general fund—beer and liquor revenue.

Section 52. Section 75-3612, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 75-3612. **Foundation program.** The moneys *available for state equalization aid* shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt *retirement,* and

Moneys available for state equalization—distribution.



HeinOnline -- 1963 vol. I 311 1963

for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

Elementary schools.

## ELEMENTARY SCHOOLS

(1) For each elementary school having eight (8) or fewer pupils and which, upon the request of the board of trustees of the district, is approved as an isolated school, the district shall receive three thousand three hundred dollars ($3,300.00), and if said school is not approved as an isolated schol, then it shall receive seventeen hundred dollars ($1,700.00).

(2) Schools with an ANB in excess of eight (8) but less than eighteen (18) pupils, shall receive three thousand three hundred dollars ($3,300.00) plus one hundred twenty-five dollars ($125.00) per pupil on the basis of average number belonging over eight (8).

(3) Schools having an ANB of eighteen (18), but less than forty-one (41), shall receive a maximum of forty-five hundred fifty dollars ($4,550.00), plus forty-one hundred dollars ($4,100.00) provided two (2) teachers are regularly employed as full-time teachers in such school, plus fifty dollars ($50.00) for each ANB over eighteen (18); forty-five hundred fifty dollars ($4,550.00) shall be the maximum for any one-teacher school, plus fifty dollars ($50.00) for an ANB over eighteen (18), not to exceed an ANB over twenty-five (25).

(4) Schools having an ANB in excess of forty (40) will be guaranteed funds only on the basis of the total pupils (ANB) in the district for elementary pupils as follows:

For a school having an ANB of more than forty (40), and employing a minimum of three (3) teachers, the maximum of three hundred twenty dollars ($320.00) shall be decreased at the rate of sixty-five cents ($0.65) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. Provided, however, that if only two (2) teachers are employed in a school with an ANB over forty (40) the maximum schedule shall be nine thousand seven hundred



HeinOnline -- 1963 vol. I 312 1963

fifty dollars ($9,750.00), plus fifty dollars ($50.00) for each ANB over forty (40), not to exceed an ANB over fifty (50). For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred eighty-one dollars ($281.00) shall be decreased at the rate of twenty-nine cents ($0.29) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed two hundred twenty-three dollars ($223.00) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all the schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

## HIGH SCHOOLS

High schools.

For a school having an average number belonging (ANB) of forty (40) or fewer pupils in a school, the guaranteed budget shall not exceed five hundred thirty dollars ($530.00) for each pupil. High schools shall not receive state equalization aid unless they have been accredited by the state board of education, and if a high school having an ANB of twenty-four (24) or less for three (3) consecutive years is not approved as an isolated high school, then it shall not receive state equalization aid.

For a secondary school having an ANB of more than forty (40) pupils, the maximum five hundred thirty dollars ($530.00) shall be decreased at the rate of two dollars and sixty cents ($2.60) for each additional pupil until the ANB shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of three hundred seventy-four dollars ($374.00) shall be decreased at the rate of sixty-five cents ($0.65) for each additional pupil until the number ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, a maximum of three hundred nine dollars ($309.00) shall be decreased at the rate of ten cents ($0.10) for each additional pupil until the total number, ANB, shall have reached three hundred



HeinOnline -- 1963 vol. I 313 1963

(300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of two hundred ninety-nine dollars ($299.00) shall be decreased at the rate of five cents ($0.05) for each additional pupil until the total number, ANB, shall have reached nine hundred (900) pupils. Schools having an ANB in excess of nine hundred (900) pupils shall receive two hundred sixty-nine dollars ($269.00) per pupil, provided that the maximum per pupil for all pupils, ANB, shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount guaranteed for the foundation program, only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment."

Amending clause.

Section 53. Section 75-3613, R. C. M. 1947, is amended to read as follows:

Enumeration of sources—aid to public schools.

Earmarked revenue fund.

"Section 75-3613. *State equalization aid to public schools — enumeration of sources — definition.* There shall be paid into *the earmarked revenue fund, for state equalization aid to* the public schools of the state, the present allocation equal to twenty-five per cent (25%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935; and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under sections 84-1501 to 84-1519, as provided in section 84-1901; *and* one-half (½) of the funds received from the treasurer of the United States as the state's share of oil and gas royalties under the act of Congress of February 25, 1920." *The term 'state equalization aid' as used in the code includes moneys coming to the state from the sources referred to above, plus any legislative appropriation of moneys from other sources for distribution to the public schools.*

"State equalization aid" defined.

Amending clause.

Section 54. Section 75-3614, R. C. M. 1947, is amended to read as follows:

State board of equalization shall administer state equalization aid.

"Section 75-3614. **State board of education to administer state public school equalization** *aid.* The state board of education *shall* administer and distribute *state equalization aid* in the manner and with the powers and duties provided in this act. Said board shall have the power to require such reports from the county superintendent of



HeinOnline -- 1963 vol. I 314 1963

schools, county budget boards, county treasurers and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this act."

Amending clause.

Section 55. Section 75-3615, R. C. M. 1947, is amended to read as follows:

Superintendent of public instruction—duty to keep data on moneys available for state equalization aid.

"Section 75-3615. **State superintendent of public instruction to compile data and make reports concerning state equalization** *aid.* The state superintendent of public instruction shall keep in his office full and complete data concerning *moneys available for state equalization aid* and, in addition thereto, after July 1, 1949, the requirements of the various school districts of the state for aid from said funds to maintain the foundation financial program herein provided. The state superintendent of public instruction shall report to the state board of education at its meetings to be held in the months of July and December in each year the estimated amount which will be *available for state equalization aid* for the succeeding six months period, commencing January 1, and July 1. In any year when a session of the state legislative assembly convenes, the state superintendent of public instruction shall report to both branches of the assembly all figures and data available in his office concerning disbursements *of state equalization aid* during the preceding two years, the amount then *available for state equalization aid,* and apportionment made of the moneys *available for state equalization aid* but not yet paid out, and the latest estimate of accruals *of moneys available for state equalization aid.*"

Report to legislature.

Amending clause.

Section 56. Section 75-3616, R. C. M. 1947, is amended to read as follows:

Board shall order disbursements of state equalization aid in December and April.

"Section 75-3616. **Distribution of funds—reports may be required.** After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements *of state equalization aid* within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to



HeinOnline -- 1963 vol. I 315 1963

maintain the foundation financial program after receipt by it of its apportioned share *of interest and income moneys,* if any, from the district levy of five mills for the foundation program provided for by section 75-1723, the county levies provided for by this act, and from all other regular sources of revenue required to be used to finance the foundation program as provided in sections 75-1723 and 75-4516.1; provided, however, that the amount *of state equalization aid* apportioned to any school district, when added to the amount *of interest income moneys* apportioned to such school district, shall not exceed fifty per cent (50%) of the total foundation program of such district, computed at the rates and amounts set forth in section 75-3612.

Limitation on amount.

Procedure for payment.

Each order of the state board of education for disbursements of *state equalization aid* shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order."

Amending clause.

Section 57. Section 75-3618, R. C. M. 1947, is amended to read as follows:

Distribution of proceeds of school levies—foundation financial program.

"Section 75-3618. **Distribution of money available to districts—formula for apportionment of county funds.** After the deduction of transportation reimbursements provided by law, the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools, shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program In all cases in which the proceeds of such county levy and the five (5) mill tax for elementary schools provided for in section 75-1723, when added to *interest and income moneys* available to the respective districts, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the county common school levy and the proceeds of the county special tax for high schools shall each be separately distributed in accordance with the folowing procedure; provided, however, that

Formula for apportionment.



HeinOnline -- 1963 vol. I 316 1963

cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after the uniform district levy and county and state equalization aid have been received:

Reduction of levies.

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total costs of the foundation program for all such districts.

Procedure.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

5. No district school shall be deprived of its needful share of either county levy by reason of it being non-accredited.

6. No territory situated within the county shall be excluded from the distribution of the school funds of the county solely because such territory lies within the boundaries of a joint district.

Section 58. Section 75-3619, R. C. M. 1947, is amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. I 317 1963

Formula for distribution of state funds—county requirements for state equalization aid.

"Section 75-3619. **Formula for distribution of state funds.** At any time when the total requirements of the several counties of the state for *state equalization aid* in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:

Procedure.

(1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available *for state equalization aid)* bears to the total cost of the foundation financial program in all counties.

(2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment *for state equalization aid)* bears to the cost of the foundation financial program of all school districts of the county.

(3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization funds but shall be excluded from further consideration under this section.

(4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program (including the total amount available *for state equalization aid*), bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds *for state equalization aid*, which when added to all other funds available to such county in support of the foundation financial program, shall be sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county; provided, however, that the amount *of state equalization aid* apportioned to any school district, when added to the amount *of interest and income moneys* apportioned to such school district not exceed fifty per cent (50%) of the total foundation program of such district.

Limitation on amount.



HeinOnline -- 1963 vol. I 318 1963

County superintendent shall distribute funds to districts—formula.

The county superintendent of schools shall distribute the funds received by such county from the state *for state equalization aid* to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state *for state equalization aid* the formula provided in section 75-3618 for the distribution of the proceeds of county levies."

Amending clause.

Section 59. Section 75-3620, R. C. M. 1947, is amended to read as follows:

State superintendent shall certify if state funds inadequate.

"75-3620. **State superintendent to give notice if state funds inadequate.** On or before June 1, 1949, if the requirements of the several school districts of the state *for state equalization aid* shall exceed the moneys available, as soon as such facts shall have been ascertained, the state superintendent of public instruction shall certify to each county superintendent of schools the amount which will be available *for state equalization aid* for the school districts of his county, and the estimated deficiency of funds for state aid in support of these foundation financial programs and transportation budgets. The county superintendent, upon receipt of such certificate shall notify each school district clerk in his county of the information contained therein."

Notice to school district clerk.

Amending clause.

Section 60. Section 75-3621, R. C. M. 1947, is amended to read as follows:

Trustees may authorize warrants if funds insufficient, not exceeding deficiency.

"Section 75-3621. **Resolution to issue warrants—hearing.** After July 1, 1949, the boards of trustees of any school district which will have insufficient funds to meet its approved budget for operating expense; including transportation expense, because of a deficiency in *state equalization aid,* may, by majority vote, adopt a resolution authorizing the issuance of warrants in excess of funds on hand for payment of budgeted expenses which shall not exceed, in the aggregate, the deficiency in payments *of state equalization aid.*

Resolution.

Notice of meeting and text.

Such resolutions must be adopted at a regular or special meeting of the board, and notice of the time and place of such meeting and the text of the proposed resolution shall be given ten (10) days prior to the meeting by posting copies of such notice at three (3) public places in the

Posting.



HeinOnline -- 1963 vol. I 319 1963

Publication.

district and by one (1) publication of such notice in a newspaper generally circulated in the district not less than ten (10) days prior to said meeting.

Hearing.

Any taxpayer on property within the district, and any parent or guardian of a school child residing in the district, may attend such meeting and be heard in support of or in opposition to such resolution. The deficiency of *state equalization aid,* evidenced by the certificate of the state superintendent, as provided for in section 75-3620 shall be sufficient cause for adoption of the resolution."

Certificate of deficiency—cause for adoption of resolution.

Amending clause.

Section 61. Section 75-3413, R. C. M. 1947, is amended to read as follows:

Reimbursement to schools—transportation.

"Section 75-3413. **Reimbursements.** (a) Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from such moneys as may be appropriated by the legislature for transportation, in an amount not to exceed one third (1/3) of the schedule provided for transportation, or services rendered in lieu of transportation, semi-annually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, of certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. A school bus route which travels through several school districts shall have the county and state reimbursement prorated among the school districts which are served by this bus route by the county transportation committee and that the schedules provided in this act for individual transportation and bus transportation or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education. In determining the cost of transportation or services in lieu thereof, no amount shall be included except those which have been paid out by a school district or county high school in the regular manner provided for the payment of other financial obligations for the maintenance of their schools.

Semi-annually.

Certified claims.

Pro-rated—school bus route through several districts.

Cost limited to amount paid out.

Reimbursement from county common school fund.

(b) Each school district maintaining one or more elementary schools, or providing for the transportation of its elementary pupils to attend school in another district, meeting the requirements of this act, shall be en-



HeinOnline -- 1963 vol. I 320 1963

titled to reimbursement from the county common school fund provided by the tax levy authorized and made in accordance with the provisions of section 75-3706, as amended, of one-third (1/3) of the schedule provided for transportation, or services rendered in lieu thereof, semi-annually, such reimbursement to be made on duplicates of the certified claims for reimbursement by the state. No apportionment shall be made of such common school fund in either June or December in each year until after such reimbursements therefrom have been made to such school districts.

Semi-annually.

Certified claims.

(c) The limitations on state reimbursement set forth in this act shall not apply to special transportation provided in connection with special education programs in accordance with the provisions of section 75-5003."

Exception—special education transportation.

Section 62. Section 75-2521, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 75-2521. **Fees for certificates for teaching.** For the issuance, renewal or extension of a certificate to teach, each applicant for such certificate shall pay a fee of one dollar ($1.00) for each year that the certificate is in force. Such fee shall be paid to the state superintendent of public instruction, who shall deposit such fees with the state treasurer *to the credit of the general fund.*"

Fees—certificates for teaching.

Deposit—general fund.

Section 63. Section 75-3503, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 75-3503. **Textbooks—license to sell—conditions.** Before any person, company, or corporation shall offer to any school district any textbook for adoption, sale or exchange, in the state of Montana, said person, company, or corporation shall comply with the following conditions:

Conditions to sell textbooks.

First: Such person shall file a copy of such textbook in the office of the state superintendent of public instruction, with a sworn statement of the list price; the lowest wholesale price; and the lowest exchange price that will be given when old books in the same subject and of the like kind and grade, but of a different series, are received in exchange, such exchange price to be based on a three (3) year adoption period. Such prices are to be quoted FOB Chicago, FOB San Francisco, FOB any other

Copy of textbook filed with statement.



HeinOnline -- 1963 vol. I 321 1963

city from which publishers may ship books, and FOB a textbook depository in Montana.

Written agreement—prices.

Second: Such persons shall file with the state superintendent of public instruction a written agreement, (1) to furnish said book or books to any school board in the state of Montana at the said lowest price so filed, and to maintain said prices uniformly throughout the state; (2) to reduce such prices automatically in Montana whenever reductions are made elsewhere in the United States; and (3) to guarantee that at no time shall any book so filed by such persons, be sold in Montana at a higher price than is received for such book elsewhere in the United States under similar conditions of transportation and marketing.

Surety bond.

Third: Such persons shall file and maintain with the secretary of state a surety bond for not less than two thousand dollars ($2,000.00) and not more than ten thousand dollars ($10,000.00), such bond to be in an amount to be fixed by the state superintendent of public instruction and to run to the state of Montana, to be conditioned on the faithful performance of all things on the part of such persons to be performed under this act and such bond to be approved by the attorney general. Upon compliance with the foregoing conditions the state superintendent of public instruction shall issue a license to any such person to sell textbooks to school districts in the state of Montana.

License to sell textbooks.

Fees.

Fourth: **License fees.** The person receiving such license shall pay a fee of one dollar ($1.00) for each book listed; provided that in the case of several books presented by one publisher in the same subject under the same series head for any one grade, the maximum filing fee in such case shall not exceed three dollars ($3.00). Such moneys received through payment of said filing fees shall be *deposited in the state treasury to the credit of the general fund.*"

Deposit—general fund.

Amending clause.

Section 64. Section 75-3505, R. C. M. 1947, is amended to read as follows:

Agreement—price of special or abridged editions.

"Section 75-3505. **Same—special or abridged editions.** Whenever the publisher shall prepare an abridged or special edition of any of his books listed with the state superintendent of public instruction and shall supply



HeinOnline -- 1963 vol. I 322 1963

such special edition elsewhere at a lower wholesale price than the wholesale price for the edition filed with the state superintendent of public instruction, the publisher must agree to furnish such special edition at the wholesale price at which it is furnished elsewhere, so long as it is supplied at the said lower price anywhere outside of Montana; and it shall be understood that the bond given by the publisher shall cover this provision as to special editions. In case an action is brought on such bond, the state, if successful, shall recover the full amount of the bond, which amount shall be paid into the state general fund."

Action on bond.

Deposit—general fund.

Section 65. Section 75-4802, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 75-4802. **Expenditure of federal funds.** The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in connection with school lunch programs, under the "National School Lunch Act," approved June 4, 1946 (Public Law 396, 79th Congress, Chapter 281, 2nd Session), and any amendments thereto. The superintendent of public instruction shall deposit all such funds received from the federal government with the treasurer of the state who shall *deposit them in the federal and private grant clearance fund and* make disbursements therefrom upon the direction of the superintendent of public instruction."

State superintendent shall accept and direct disbursement of federal school lunch funds.

Deposit—federal and private grant clearance fund.

Section 66. Section 82-3104, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 82-3104. **Authorization for financing.** The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property *which shall be deposited in the treasury in the federal and private grant clearance fund.* At any time the state board of education deems that sufficient surplus has accumulated in the surplus property account, over and above the necessary funds for proper expenditures and reasonable reserve, a rebate shall be made to all institutions as listed in section 82-3102 (a) which have participated in surplus property purchases during the particular period in which this

Receipts for surplus property.

Deposit—federal and private grant clearance fund.

Rebate.



HeinOnline -- 1963 vol. I 323 1963

Ratio.

surplus has accumulated. This rebate shall be determined on a ratio of business transacted by each such institution to the total business transacted by the state agency during the time involved."

Amending clause.

Section 67. Section 75-5101, R. C. M. 1947, is amended to read as follows:

Governor and superintendent authorized to request and accept federal funds for school construction.

"Section 75-5101. **Federal funds—authority to accept.** The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction with the treasurer of the state of Montana."

Deposit.

Amending clause.

Section 68. Section 69-3015, R. C. M. 1947, is amended to read as follows:

Board authorized to receive federal funds for hospital construction.

"Section 69-3015. **Hospital and medical facilities construction** *moneys.* The board is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants. Money received from the federal government for a construction project approved by the surgeon general shall be deposited *in the state treasury* and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments shall, if approved by the board, bear the signature of the executive officer (secretary) of the board, or in his absence, the director."

Deposit—use.

Claims—approval—signature.

Amending clause.

Section 69. Section 11-1920, R. C. M. 1947, is amended to read as follows:

Auditor shall estimate needed amount.

"Section 11-1920. *Estimate of payments.* The state auditor shall *estimate the portion of premium taxes needed to make the payments required by this act and shall* pay an amount equal to the *estimate* into the state treasury, to the credit of *the earmarked revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund.*

Deposit—earmarked revenue fund.

General fund.



HeinOnline -- 1963 vol. I 324 1963

Amending clause.

Section 70. Section 11-1921, R. C. M. 1947, is hereby amended to read as follows:

Treasurer shall pay warrants from earmarked revenue fund.

"Section 11-1921. **State treasurer to pay warrants.** The state treasurer is hereby authorized and directed, upon the presentation to him of *a warrant drawn pursuant to this act,* to pay to the treasurer of any such city or town, out of *moneys in the earmarked revenue fund dedicated for such purpose,* the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association."

Amending clause.

Section 71. Section 15-2024, R. C. M. 1947, enacted as Section 24, Chapter 251, Laws of 1961, is amended to read as follows:

Auditor—ex-officio investment commissioner shall administer.

"Section 15-2024. **Administration of act.** (1) The administration of the provisions of this act shall be under the general supervision and control of the state auditor, the ex officio investment commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this act. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisons of this act. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this act to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

Rules and forms—public interest—protection of investors.

Cooperation to achieve uniformity.

Issue or broker-dealer shall bear expense of investigation.

(2) Any issuer or broker-dealer who is investigated or examined in connection with a registration under this act shall reimburse the commissioner, or any of his duly authorized agents, officers or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefore and as established and adopted by the commissioner, upon the effective date of this act and annually thereafter, upon presentation of a detailed account of such charges and expenses by the commis-



HeinOnline -- 1963 vol. I 325 1963

sioner or pursuant to his written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

Deposit—general fund.

The commissioner shall pay to the state treasurer to the credit of *the general fund* all moneys received hereunder.

Failure to pay—penalties.

If any issuer or broker-dealer fails to pay the charges and expenses referred to above the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer, and may be recovered by suit by the attorney general on behalf of the state of Montana, and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under this act.

Unlawful to use information for personal benefit.

(3) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this act authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under this act.

Limitation on liability.

(4) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Hearing.

(5) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

Commissioner shall keep register—public inspection.

(6) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this



HeinOnline -- 1963 vol. I 326 1963

act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(7) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies( certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified." Copies shall be furnished.

Section 72. Section 40-2717, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 40-2717. **Examination expense.** (1) Each person so examined, other than as to examinations pursuant to section 40-2714, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established or adopted by the commissioner, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. Such an account may be so presented periodically during the course of the examination or at the termination of the examination, as the commissioner deems proper. No person shall pay and no examiner shall accept any additional emolument on account of any such examination. Person examined shall bear expenses. Detailed account.

(2) The commissioner shall pay to the state treasurer to the credit of *the general fund* all moneys received pursuant to subsection (1) above. Deposit— general fund.

(3) If any such person fails to pay the charges and expenses, as referred to in subsection (1) above, they shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such person, and may be recovered by suit by the attorney general on behalf of Failure to pay— penalties.



HeinOnline -- 1963 vol. I 327 1963

the state of Montana, and restored to the appropriate fund."

Amending clause.

Section 73. Section 82-1507, R. C. M. 1947, is amended to read as follows:

Levy by state board of hail insurance.

"Section 82-1507. **Scope and object of levy—reserve.** (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

Expenses—interest.

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

Portion of losses.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve.

Maintenance of reserve.

3. For the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

Refund of excess.

4. If at the end of any hail insurance season the state board of hail insurance determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made, and which funds are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the state board of hail insurance may, at its discretion, refund to the farmers insured for the said year, on a pro rata or percentage basis the excess.

Limitation on levy.

(2) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it shall not increase the levy enough in any year so that such addition to the reserve will exceed five per cent (5%) of the maximum risk written for that year and provided further, that the reserve shall not exceed the amount of one million two hundred thousand dollars ($1,200,000.00).

Deposit—agency fund.

(3) The reserve hereby created shall be *deposited in the agency* fund and the state board of hail insurance is hereby



HeinOnline -- 1963 vol. I 328 1963

granted the power to draw from *its moneys in* said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one (1) year the cost of administration, interest and losses for the current year shall be less than the sum of sixty cents (60¢) per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the state board of hail insurance shall not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance."

Limitation on withdrawal.

Section 74. Section 82-1505, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 82-1505. **Reinsurance.** Because of the unusual or unexpected variation in the severity of damage to grain crops which occur from year to year and in order to enable the state hail insurance *board* to spread the effect of these variations more evenly over all years, the state board is hereby authorized to negotiate for and to secure reinsurance of a part of the risk in any year when the need of such reinsurance appears advisable to the board. The state board is hereby authorized to use moneys from hail insurance *levies* for the purchase of such reinsurance whenever it appears to the board that such reinsurance is necessary and advisable."

State board of hail insurance authorized to procure reinsurance.

Section 75. Section 82-1511, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 82-1511. **State treasurer's duty—transfer of funds—warrants—transfers to county and state general fund.** The state treasurer shall receive all moneys paid to him under this act and shall place same to the credit of *the agency* fund and may from time to time transfer to the *earmarked revenue fund* such sums as the state board may deem necessary and proper to pay the expenses of administration. *All moneys collected by the board shall be deposited in the agency fund and all losses shall be paid from that fund. All other costs are administrative expenses and shall be paid from the board's account in the ear-*

Deposit and transfer of moneys.

Losses paid from agency fund.

Expenses paid from earmarked revenue fund.



HeinOnline -- 1963 vol. I 329 1963

*marked revenue fund.* If *registered* warrants be presented and there be no money to pay the same, such warrants shall be registered and thereafter bear interest at the rate of four percent (4%) per annum until called for payment by the state treasurer. If at any time more funds are in the *earmarked revenue* fund than the board estimates are needed for *administrative expense,* the state treasurer may on the order of the state board of hail insurance transfer such funds back to the *agency* fund as the state board may direct.

Unpaid warrants.

Transfer—excess moneys.

Upon warrants drawn by order of the state board of hail insurance the state treasurer shall pay out of the *board's account in the agency* fund to the county treasurer of each county where state hail insurance coverage is in force one per cent (1%) of the gross annual levies made and collected in such county under the hail insurance act for the use of the county as the board of county commissioners may determine.

Transfer to counties.

Upon authorization from the state board of hail insurance the state treasurer shall transfer out of *the board's account in the agency* fund to the general fund of the state of Montana two per cent (2%) of the gross annual levies made and collected in the state of Montana."

Transfer to general fund.

Section 76. Section 82-1516, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 82-1516. **Appointment of appraisers in case of dissatisfaction with official adjustment.** (1) In case the party that has sustained the lass is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within four (4) days after such disagreement. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars ($10.00) with the request for re-appraisal of the first adjustment. In cases where the board requires the posting of the ten dollar ($10.00) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant shall then appoint one disinterested person

Appeal from adjustment—reappraisal.

Bond.

Three apraisers appointed.



HeinOnline -- 1963 vol. I 330 1963

as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witneses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

Payment of expenses.

(2) If the insured shall be required to pay the expenses of such reappraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

Deduction.

Provided, also, that where any claimant demands arbitration he shall, if required by the board, furnish a cash bond to the state board of hail insurance in the sum of twenty-five dollars ($25.00) which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the twenty-five dollars ($25.00) bond, then the state board may use a part or all or said cash bond. In cases where the claimant secures an increase the bond shall be promptly returned to the claimant.

Arbitration bond.

(3) The state board of hail insurance shall examine all reports of appraisers and verify the same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses and conduct examinations and do all things necessary to secure a fair and impartial appraisement of losses by hail."

Board's authority to adjust losses.

Section 77. Section 82-1517, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 82-1517. **Payment of losses.** (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of

Payment of hail losses.



HeinOnline -- 1963 vol. I 331 1963

the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty (40) days from the time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent of the total loss as agreed on, less, however, the maximum rate of assessment; balance to be paid at the expiration of the hail season.

Board shall order payment.

(2) The state board of hail insurance shall, on or before November first, order *payment* for the amount so deducted, which *payment* shall be remittted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order *payment* for the balance of the adjustment which *payment* shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed twelve dollars ($12.00) per acre for grain crops on nonirrigated lands, and twenty-four dollars ($24.00) per acre on irrigated lands, and not to exceed twelve dollars ($12.00) per acre on hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not equal or exceed five per cent (5%) of the total value of the crop insured. Also if the losses in any year should exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of said losses shall be paid out of the reserve without interest in such order as the state board of hail insurance shall direct when in the judgment of the said board there are sufficient moneys to provide for the payment of the same and other items payable out of said *reserve*. In any year the state board of hail insurance may by resolution authorize its chairman and secretary to borrow as needed from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued.

Limitation—amount of payment.

Prorated payment—insufficient funds.

Balance paid from reserve.

Board may borrow money.

Warrants—interest.

(3) For any moneys borrowed under the provisions



HeinOnline -- 1963 vol. I 332 1963

of this act, the state board of hail insurance shall cause warrants to be drawn and said warrants shall bear interest at not to exceed six per cent (6%) per annum and said warrants and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such deliquent taxes as remain unpaid on the books of the county treasurer."

Limitation—amount of loan.

Section 78. Section 89-116.1, R. C. M. 1947, enacted as section 1, chapter 148, laws of 1951, is amended to read as follows:

Amending clause.

"Section 89-116.1. *Disposition of moneys received from sale of water.* The outstanding water conservation revenue bonds issued for seventeen (17) major irrigation projects *and purchased by the state shall be administered by the board for the benefit of the state general fund.* All sums received from the sale of water through water purchase contracts or otherwise from said seventeen (17) irrigation projects, except those funds which are specifically collected for the operation and maintenance of said projects; and all other income or other benefits arising from, out of, or in connection with the ownership of said projects from whatever source derived *shall be deposited in the state general fund, to be applied on the retirement of said bonds and any advances or other indebtedness made for the benefit of the seventeen (17) projects by the State Water Conservation Board.*"

Proceeds from sale of water—deposit in general fund—use.

Section 79. Section 89-120, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 89-120. *Limitation of liability*—**receipt of contributions and appropriations authorized.** No liability or obligation shall be incurred under the provisions of this act beyond the extent to which money shall have been provided under the authority of this act. All public or private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefore out of funds provided by this act.

Limitation—liability or obligation.

Restoration of property.



HeinOnline -- 1963 vol. I 333 1963

Board has authority to receive and accept contributions.

The board shall also have authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided."

Amending clause.

Section 80. Section 89-402, R. C. M. 1947, is amended to read as follows:

Moneys shall be paid from earmarked revenue fund.

"Section 89-402. **Payment of expenses.** From the moneys *of the board in the earmarked revenue fund* there shall be paid, upon vouchers approved by the board, attested by the secretary, such sums as are found to be

Survey—undeveloped lands.

necessary or expedient for the investigation and survey of unreclaimed and undeveloped lands, to determine the relative agricultural value, productiveness, uses and feasibility and cost of the reclamation and development

Survey—systems and projects.

thereof; for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the board; such

Reclamation, districts.

amounts as may be authorized by the board for the reclamation of lands by dyking, drainage, dyking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or un-

Dams and dykes.

developed lands; such amounts as may be authorized by the board for the construction, maintenace and operation of dams and dykes for the conservation of water for reclamation projects or stock reservoirs, and purchase

Water conservation projects—costs.

of rights-of-way and other costs preliminary to construction of reclamation, stock reservoirs, electrification or rehabilitation systems or projects authorized under the water conservation act or acts amendatory thereof or supplemental thereto, provided that whenever deemed

Board may employ county surveyors.

practical the board may employ county surveryors in the assistance and preparation of surveys and investigations conducted by the board."

Amending clause.

Section 81. Section 93-2011, R. C. M. 1947, is amended to read as follows:

Attorneys' license tax.

"Section 93-2011. *Disposition of* **attorneys' license tax.** All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of



HeinOnline -- 1963 vol. I 334 1963

the supreme court, and the state treasurer shall *deposit such moneys in the general fund.*" Deposit—general fund.

Secion 82. Section 93-2014, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 93-2014. **Compensation and expenses of members of board.** The members of said board shall be entitled to their necessary traveling expenses in attending meetings of said board and in conducting such examination, and also, when away from their homes or places of residence, their necessary lodging and hotel expenses, and shall be paid such compensation, per diem, for services performed by them as members of said board, as may be fixed and determined by the supreme court." Board members allowed expenses and per diem.

Section 83. Section 93-2015, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 93-2015. **Fees on application for admission to bar.** Every applicant for admission to the bar, by examination or otherwise, must pay to the clerk of the supreme court, at the time he files his application for examination or his petition for admission, the sum of twenty-five dollars ($25.00). Should the applicant fail in the examination taken by him, he may take another examination before the said board at any time within one year thereafter without further payment. No other fee shall be exacted for admission of any applicant, if admitted within one year after the payment of the fee of twenty-five dollars ($25.00) hereinabove designated. All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court, and placed in *the general fund.*" Application for admission to bar—fee $25.00. Deposit—general fund.

Section 84. Section 93-2020, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 93-2020. **Witnesses on behalf of complainant, fees and mileage of.** Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court." Witnesses allowed fees and mileage.

Section 85. Section 44-410, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 44-410. **Accounts—approval.** All accounts for the proofing and printing of books, legal periodicals, Librarian's accounts require approval.



HeinOnline -- 1963 vol. I 335 1963

library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees."

Amending clause.

Section 86. Section 44-412, R. C. M. 1947, is amended to read as follows:

Law librarian authorized to employ for index assistance.

"Section 44-412. **Assistance in preparing index.** The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes."

Amending clause.

Section 87. Section 82-503, R. C. M. 1947, is amended to read as follows:

Clerk of supreme court must collect fees in advance.

"Section 82-503. **Fees.** He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars ($10.00) payable by the appellant, and five dollars ($5.00) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars ($10.00), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five ($5.00); for making transcripts, copies of papers or record, fifteen cents (15¢) per folio; for comparing any document requiring a certificate, five cents (5¢) per folio; for each certificate under seal, one dollar ($1.00).

Deposit—general fund.

All fees collected by him must be paid into the state treasury, all of which shall be credited to the credit of the state *general* fund."

Amending clause.

Section 88. Section 46-105, R. C. M. 1947, is amended to read as follows:

Duty of livestock commission—audit of expenses—payment.

"Section 46-105. *Audit of bills—payment of expenses.* It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission *moneys in the earmarked revenue* fund."

Section 89. Section 84-5212, R. C. M. 1947, is amended to read as follows:

Tax on sheep—deposit in earmarked revenue fund—use.

"Section 84-5212. **Use of *moneys* arising from taxes prescribed in preceding section.** The money received from the tax levied on sheep, as provided in the first



HeinOnline -- 1963 vol. I 336 1963

part of the preceding section, shall be placed to the credit of the *earmarked revenue* fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the *livestock commission,* and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the *earmarked revenue* fund, to be used for like purposes for said *livestock commission.* The moneys received from the tax levied by the second division of the preceding section, shall be placed in the *earmarked revenue fund,* to be used by *the livestock sanitary* board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseseases, including quarantine and all expenses connected therewith."

Livestock commission.

Livestock sanitary board.

Section 90. Section 46-609, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-609. **Fees for recorder of marks and brands.** The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of eight ($8.00), and for re-recording each mark or brand the sum of four dollars ($4.00), and for a certified copy of any such record and each duplicate certificate one dollar $1.00), and all fees so collected shall be paid into the *earmarked revenue* fund *for the use of the livestock commission;* providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor."

Recorder of marks and brands shall collect fees.

Deposit in earmarked revenue fund—use by livestock commission.

Section 91. Section 46-704, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-704. **Compensation.** The stock inspectors and detectives are under the exclusive control and direction of the *commission,* and must be paid for their services such sums as may be agreed upon by the *commission,* but in no case must they receive any mileage."

Compensation—stock inspectors and detectives.

Section 92. Section 46-707, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-707. **Compensation for animals killed.** The value of the animal so taken and killed shall be

Compensation for animals killed.



HeinOnline -- 1963 vol. I 337 1963

determined by three distinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission *moneys in the earmarked revenue* fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund."

Payment.

Amending clause.

Section 93. Section 46-804, R. C. M. 1947, is amended to read as follows:

Fees—livestock inspection and transportation permit—removal from county.

"Section 46-804. **Fees for inspection and livestock transportation permit.** (a) For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar ($1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the *earmarked revenue* fund *for the use of the livestock commission.*

Deposit in earmarked revenue fund.

Fees—livestock inspection before sale.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making



HeinOnline -- 1963 vol. I 338 1963

such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the *earmarked revenue* fund *for the use of the livestock commission.*

Deposit in earmarked revenue fund.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the *earmarked revenue* fund *for the use of the livestock commission,* and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners."

Deposit for use of livestock commission.

Section 94. Section 46-806, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-806. **Penalties for violations of act.** (a) Any person who removes or causes to be removed from any county in the state any animal or animals of the class referred to in section 46-801; (1) without having the same inspected prior to removal where such inspection is required by law; (2) without obtaining a market consignment permit or transportation permit, where such permits

Violations—penalties.



HeinOnline -- 1963 vol. I 339 1963

are obtainable by law; (3) and does obtain a market consignment permit for such animal or animals but does not deliver such animal or animals transported thereunder to the livestock market designated in the market consignment permit; (4) and does obtain a transportation permit for such animal or animals but does not deliver such animal or animals transported thereunder to the destination as shown on the transportation permit and fails to have such livestock so transported inspected at point of destination or does not file a loading tally with the carrier as provided in section 46-1008; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(b) Any person who sells or offers for sale at a livestock market, or removes or causes to be removed from a livestock market, any animal or animals of the class referred to in section 46-801, without having the same inspected in the manner provided shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(c) Any person who shall ship by railroad carrier, and the railroad carrier transporting, any animal or animals of the class referred to in section 46-801 for which a loading tally has been filed as provided by section 46-1008 and for which shipment of animals an inspection has not been made, and after shipment, causes or permits such animal or animals to leave the custody of the railroad carrier at a place other than where the state of Montana regularly maintains a stock inspector, shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.

(d) Any person who has in his charge any animal or animals of the class referred to in section 46-801 being removed from any county in the state, and for which an inspection certificate or a market consignment has been issued, and fails to have in his possesison accompanying such animal or animals the inspection certificate or market consignment permit as issued for such animal or animals; or who, having such certificate of inspection or market consignment permit, fails to exhibit the same to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of any such person; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided.



HeinOnline -- 1963 vol. I 340 1963

(e) Any person violating any of the provisions of this act in respect to moving, removing or transporting any animal or animals of the class referred to in section 46-801, or in any other particular, shall be guilty of a misdemeanor and shall be punishable as hereinafter provided,

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the *earmarked revenue fund for the use of the livestock commission,* and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred."

Fines—50% deposit in earmarked revenue fund.

50% deposit in general fund of county.

Section 95. Section 46-911, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-911. **License fee.** Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars ($100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the *earmarked revenue* fund *for the use of the livestock commission."*

Livestock market—license fee.

Deposit in earmarked revenue fund.

Section 96. Section 52-322, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 52-322. **Fees—disposal of.** The general recorders of marks and brands shall charge for filing and listing such notices of chattel mortgages the sum of one dollar ($1.00) for each recorded brand listed in each chattel mortgage, and for filing and listing each notice of satisfaction or renewal or assignment of such chattel mortgage, the sum of one dollar ($1.00) for each recorded brand listed therein. All fees so charged shall be paid into the *earmarked revenue* fund *for the use of the livestock commission."*

Recorder of marks and brands—filing fees.

Deposit in earmarked revenue fund.

Section 97. Section 46-1901, R.C.M. 1947, is amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. I 341 1963

Payment of bounty claims—5% of county license.

"Section 46-1901. *Five per cent of county license money to be used for payment of bounty claims.* For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the *earmarked revenue* fund."

Deposit in earmarked revenue fund.

Amending clause.

Section 98. Section 46-1903, R.C.M. 1947, is amended to read as follows:

Livestock commission shall supervise destruction of predatory animals.

"Section 46-1903. **Livestock commission to supervise destruction of predatory animals — co-operation with other agencies—advisory committee**—*Administration of moneys.* (a) The destruction, extermination and control of wild animals, including wolf, wolverine, coyote, mountain lion, lynx, cougar, bobcat and any other wild animals predatory in nature and causing, or capable of causing the killing, destruction, maiming or injury of domestic livestock of all species, and of domestic poultry of all varieties, or depredations thereon, shall, as respects the protection and safeguarding of all said livestock and poultry in the state, against all depredations from such animals, be conducted in the state and carried out by the Montana livestock commission which is hereby charged with the primary duty and responsibility of formulating practical programs for accomplishing said objectives in all areas of Montana, and of carrying out such programs in an efficient and practical manner, responsive to the need for control in each area of the state. The said commission shall adopt such standing rules and regulations, within the purview of the authority vested in it by the statutes of the state of Montana applicable to predatory animal control, as are necessary and proper for the systematic destruction of said wild animals by hunting, trapping and poisoning operations, and payments of bounties, and the commission shall, from time to time, issue, modify, amend or repeal field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, as may be appropriate in the various areas, at different seasons of the year, and with reference to the habits, presence, migrations or movements of such animals, and their attacks on livestock and poultry, either singly or in packs or bands. The said commission is hereby expressly authorized, empowered and directed to co-operate with the duly authorized representa-

Co-operation with other government agencies authorized.



HeinOnline -- 1963 vol. I 342 1963

tives of the United States, including its Biological Survey, its Fish and Wild Life Service, with the state fish and game commission of the state of Montana, and with boards of county commisisoners in the several counties of the state, and with voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers and sportsmen, and with corporations and individuals, in the systematic destruction of said wild animals by hunting, trapping and poisoning operations.

Governor shall appoint advisory committee—predatory animal control.

(b) The governor shall appoint an advisory committee, composed of one (1) representative of each, the Montana Woolgrowers' Association, the Montana County Commissioners' Association, the Montana Stockgrowers' Association, the Montana Federated Wildlife Clubs, and the state fish and game warden, which advisory committee shall consult with and advise the Montana livestock commission, the state fish and game commission, and county and local predatory animal control organizations in all matters pertaining to their activities hereunder and under any other laws of this state applicable to predatory animal control, and develop and formulate plans for effective predatory animal extermination and controls throughout the state, and advise with respect to the expenditure of all moneys for the control of such animals by each said agencies, organizations and persons. The secretary of the Montana livestock commission shall be ex officio, secretary of said advisory committee, and the committee shall elect one (1) of its members chairman thereof. The committee shall meet on five (5) days' notice, at the call of its chairman, or at request of any two (2) members, or at the request of the Montana livestock commission.

Expenditure of funds—livestock commission.

(c) Subject to the constitutional authority of the state board of examiners, the Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 9 of article XII of the Constitution of Montana and section 84-5214, enacted pursuant to such provision of the constitution, and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission



HeinOnline -- 1963 vol. I 343 1963

shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commisison shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

Expenditure of funds—state fish and game commission.

(d) Nothing herein contained shall be construed to interfere with or impair the power and duties of the state fish and game commission in the control of predatory animals by said commission as authorized by law, nor the obligation of said commission to expend its funds in co-operation with the Montana livestock commission, for predatory animal control as required by law, provided that all funds of the state fish and game commission for such co-operative predatory animal control shall be administered and expended by the state fish and game commission."

Amending clause.

Section 99. Section 46-1904, R. C. M. 1947, is amended to read as follows:

Proceeds of sale—skins, hides and specimens.

"Section 46-1904. **Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.** All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the *earmarked revenue* fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution."

Deposit in earmarked revenue fund.

Gift of specimens to museums.

Amending clause.

Section 100. Section 46-1912, R. C. M. 1947, is amended to read as follows:

Use of surplus after payment of bounties.

"Section 46-1912. **Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.** If, at the end of any bounty paying season, there shall be a surplus *of moneys available for the administration of Chapter 19, Title 46, R. C. M. 1947,* such surplus may be used to hire salaried hunters



HeinOnline -- 1963 vol. I 344 1963

and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of *such moneys,* shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the *earmarked revenue* fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution."

Deposit in earmarked revenue fund.

Gift of specimens to museums.

Section 101. Section 46-1914, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-1914. **Levy of tax for** *purpose of paying for destruction of wild animals*—**limitation on levy.** The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half (1½) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the *earmarked revenue fund,* and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims."

Annual tax levy—recommendation by livestock commission for destruction of wild animals.

Limitation.

Deposit in earmarked revenue fund.

Section 102. Section 46-1915, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-1915. **Penalty for fraudulent claims.** Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins

Fraudulent bounty claims—penalty.



HeinOnline -- 1963 vol. I 345 1963

and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be *deposited in the earmarked revenue fund and used for the administration of this act.*"

Payment to informer.

Balance—deposit in earmarked revenue fund—use.

Amending clause.

Section 103. Section 84-5214, R. C. M. 1947, is amended to read as follows:

Annual ad valorem tax on livestock—bounty moneys.

"Section 84-5214. **Levy for bounty** *moneys*—**use of proceeds.** The state board of equalization of the state of Montana shall, under the authority of section 9, article XII of the constitution of Montana, and hereby, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the *earmarked revenue* fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or

Limitation.

Deposit in earmarked revenue fund.

Use.



HeinOnline -- 1963 vol. I 346 1963

to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All *such* moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in cooperation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys *available for such purposes,* and no warrants shall be registered against such *moneys.*''

No claims in excess of available moneys.

No warrants.

Section 104. Section 84-2708, R. C. M. 1947, is amended to read as follows:

Amending clause.

''Section 84-2708. **Disposal of license moneys.** All moneys collected for licenses must be paid into the treasury of the county in which the same are collected. The county treasurer shall retain fifty per cent thereof for the use of the county, he shall pay over forty-five per cent thereof to the state treasurer for the use of the general fund of the state and he shall pay over five per cent thereof to the state treasurer *for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control.*''

Disposal of license moneys—50% to county, 45% to general fund, 5% to earmarked revenue fund.

Section 105. Section 3-2704, R. C. M. 1947, is amended to read as follows:

Amending clause.

Section 3-2704. **Purchase** *and sale* **of** *rodent control* **supplies.** In addition to the expenditures hereinbefore authorized the state of Montana livestock commission is authorized to purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, and counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such co-operators at approximate cost.''

Livestock commission authorized to purchase rodent control supplies.

Section 106. Section 46-904, R. C. M. 1947, is amended to read as follows:

Amending clause.

''Section 46-904. **State treasurer to hold proceeds of sales of stray stock.** When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from

Treasurer shall hold proceeds of sales of stray stock for one year in agency fund.



HeinOnline -- 1963 vol. I 347 1963

the state livestock commission, the state treasurer shall be required to hold such money in *the agency fund* and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the *earmarked revenue* fund *for the use of the livestock commission.*"

Transfer to earmarked revenue fund.

Amending clause.

Section 107. Section 46-1006, R. C. M. 1947, is amended to read as follows:

"Section 46-1006. **Publication of description of estrays sold—disposition of proceeds remaining in state treasury.** A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the *earmarked revenue* fund *for the use of the livestock commission.*"

Publication of description of estrays sold.

Deposit in earmarked revenue fund.

Amending clause.

Section 108. Section 46-803, R. C. M. 1947, is amended to read as follows:

"Section 46-803. **Seizure of livestock, retention of livestock, sale, disposal of proceeds.** All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished

State stock inspector authorized to seize livestock.



HeinOnline -- 1963 vol. I 348 1963

by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Sale of seized livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the *agency* fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims *for moneys arising from the sale of stray stock.*"

Proceeds held in agency fund.

Amending clause.

Section 109. Section 84-5211, R. C. M. 1947, is amended to read as follows:

Limitation on levies on livestock.

"Section 84-5211. **Limitation of levies — livestock** *moneys.* The amount of such levy shall not in any event exceed one mill upon the assessed valuation of sheep and one and one-half mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the livestock commission of Montana, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expense, and a separate levy of not exceeding one and one-half mills on all livestock for the use of the livestock sanitary board to be placed in *the earmarked revenue* fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state *controller,* at the written request of the livestock sanitary board shall set aside *in a separate account in the earmarked revenue fund such moneys* as may be available and requested, which

Use of moneys—livestock commission.

Livestock sanitary board.

Separate account—livestock disease emergency.



HeinOnline -- 1963 vol. I 349 1963

*moneys* shall be expended only when the livestock sanitary board determines that a livestock disease emergency exists requiring its expenditure, and *they* shall then be expended for such purposes as the livestock sanitary board may order and direct."

Amending clause.

Section 110. Section 91-502, R. C. M. 1947, is amended to read as follows:

Title to escheated property vests in state.

"Section 91-502. **Title to escheated property vests in state—when.** Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the

Upon death.

state of Montana immediately upon death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within

20 year period.

this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

Deposit in agency fund.

Limitation on costs of recovery.

All sums escheated under the provisions of the Escheated Property Act shall be deposited by the treasurer in the *agency* fund; in connection with the recovery of money or property from escheats other than those from estates, the state treasurer is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Held in agency fund 10 years—transfer to public school subfund in trust and legacy fund.

Moneys and properties placed in the *agency* fund shall be held in trust for a period of ten (10) years prior to deposit in the public school *sub*fund *in the trust and legacy fund* by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the pro-



HeinOnline -- 1963 vol. I 350 1963

perty or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

Action for dissolution of trust.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property."

Discovery on motion in district court.

Section 111. Section 91-504, R.C.M. 1947, is amended to read as follows:

Amending clause.

"Section 91-504. **Investment and disposal of money and property.** The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interest of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the state treasurer with a statement as to the estates to which the money belongs. And the state treasurer shall thereupon deposit such money so received by him in the *agency* fund of the state of Montana."

Escheat estate moneys may be invested.

Order to sell property—county treasurer shall remit moneys to state treasurer.

Deposit in agency fund.

Section 112. Section 91-505, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 91-505. **Unsold personal property, how disposed of—auction sale.** If the personal property in an estate was not sold by the executor or administrator at the final settlement of the estates as by law provided, then it shall be the duty of such executor or administrator to turn over all of such property to the county treasurer, who in turn shall deliver it to the state treasurer with a

State treasurer shall sell escheated personal property at public auction.



HeinOnline -- 1963 vol. I 351 1963

statement setting forth the name of the estate to which it belongs, and the state treasurer must within one (1) year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale, at his office in Helena, Montana. The state treasurer shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for two (2) successive weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, effects, or other personal property to be sold. All of the expenses of such sale shall be deducted from the proceeds thereof by the state treasurer and the balance of such proceeds shall be deposited by the state treasurer in the *agency* fund of the state of Montana."

Notice of sale—publication.

Deduction of expenses.

Deposit in agency fund.

Amending clause.

Section 113. Section 91-506, R. C. M. 1947, is amended to read as follows:

Duty to deed escheated real property to state.

"Section 91-506. **Unsold real property, how disposed of—auction sale.** If the real property was not sold by the executor or administrator or public administrator at the final settlement of the estate as by law provided, then it shall be the duty of the executor or administrator or public administrator to make and execute to the state of Montana an executor's or administrator's deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the said deed to the state board of land commissioners. Within one (1) year after the receipt of such recorded deed the state board of land commissioners shall cause such property to be sold to the highest bidder at public auction sale, to be held at the court house in the county where such real property or any part thereof is situated. The state board of land commissioners shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for two (2) weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice

Delivery of deed to county clerk.

Duty to record.

State board of land commissioners shall sell escheated real property at public auction.

Notice of sale—publication.



HeinOnline -- 1963 vol. I 352 1963

shall give the time and place of such sale and contain a description of the real property to be sold. All expenses of such sale shall be deducted by the state board of land commissioners from the proceeds thereof and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the *agency* fund of the state of Montana."

Deduction of expenses.

Deposit in agency fund.

Section 114. Section 91-507, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 91-507. **Unclaimed personal property in hands of agent—disposal.** Whenever the personal property in an estate remains in the hands of an agent, unclaimed for two (2) years and it appears to the court or judge that it is for the best interests of the estate and those interested therein, such property shall be sold under the order of the court or judge and the proceeds, after deducting the expense of the sale allowed by the court or judge, must be paid into the state treasury, and upon receipt of such proceeds it shall be the duty of the state treasurer to deposit the same in the *agency* fund of the state of Montana."

Sale of unclaimed personal property in hands of agent.

Order of court.

Proceeds—deposit in agency fund.

Section 115. Section 91-512, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 91-512. **Duty of attorney general—employment of special assistant.** The attorney general of the state of Montana shall be the legal advisor to the state treasurer in connection with all escheated property matters and it shall be the duty of the attorney general to make investigations and conduct inquiries to determine whether there is property in the state of Montana which should escheat to the state of Montana, and to take all steps necessary to secure such escheat, and for this purpose the attorney general is authorized and empowered to employ a special assistant at a salary not to exceed six thousand dollars ($6,000.00) per annum together with actual, necessary expenses while engaged in outside work in connection with the duties of his office as defined by law."

Duties of attorney general—escheated property

May employ special assistant—salary, expenses.

Section 116. Section 91-523, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 91-523. **Disposition of money.** All money, including that realized from the sale or sales of property

Escheated moneys.



HeinOnline -- 1963 vol. I 353 1963

delivered to the county by an executor or administrator, under the provisions of this act shall, immediately upon its receipt by the county treasurer be delivered to the state treasurer and by him deposited in the *agency* fund of the state of Montana."

Deposit in agency fund.

Amending clause.

Section 117. Section 91-526, R. C. M. 1947, is amended to read as follows:

Unclaimed money or property—escheat to state.

"Section 91-526. **Deposit of unclaimed property—escheat to state.** All money or other property distributed in the administration of an estate of a decedent, or as the subject of a trust, and heretofore or hereafter deposited with the county treasurer to the credit of the distributee, or beneficiary, and any money remaining on deposit to the credit of an estate after final distribution, must be delivered into the state treasury *for deposit in the agency fund* by the county treasurer upon the expiration of one (1) year from the day of such deposit. Money or other property so deposited in the state treasury, if not claimed by the person or persons entitled thereto, within two (2) years from the date of such deposit, by bringing an action as provided in section 91-501 to 91-513, known as the 'escheated property act,' shall escheat to the state of Montana, and be placed in the public school *sub*fund *of the trust and legacy fund* as provided therein."

Deposit in agency fund.

Unclaimed for two years—transfer to public school subfund of trust and legacy fund.

Amending clause.

Section 118. Section 66-1237, R. C. M. 1947, is amended to read as follows:

Fees and fines—state board of nursing.

"Section 66-1237. *Disposition of fees.* All fees received by the Montana state board of nursing, and all fines collected under this act shall be paid over by the executive secretary to the state treasurer for the credit of *the earmarked revenue fund for the use of the state board of nursing.*"

Deposit in earmarked revenue fund.

Amending clause.

Section 119. Section 69-3404, R. C. M. 1947, enacted as section 3, chapter 174, laws of 1959, is amended to read as follows:

Certificate of registration as sanitarian—fee.

"Section 69-3404. **Fees.** Applicants for registration shall pay a fee of twenty dollars ($20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying an annual fee as set by the board, but not to exceed ten dollars ($10.00). All fees collected shall be paid to the

Renewal—fee.



HeinOnline -- 1963 vol. I 354 1963

board of health and *deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council.* All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the council."

Deposit in earmarked revenue fund.

Fees due July 1.

Reinstatement.

Section 120. Section 66-1307, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-1307. **Renewal of registration—revocation—fees.** Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of twenty dollars ($20.00) in return for which a renewal of registration shall be issued. The board may *present* to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars ($25.00)."

Renewal of registration as optometrist.

Fee.

Educational program.

Revocation.

Notice.

Renewal with penalty.

Section 121. Section 66-1311, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-1311. **Compensation of examiners—report.** Each member *of the board* may receive as compensation the sum of twenty-five dollars ($25.00) and necessary expenses for each day actually engaged in the duties of his office. All moneys received *by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry.* The secretary of said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act."

Compensation and expenses—state board of examiners in optometry.

Annual report to governor.



HeinOnline -- 1963 vol. I 355 1963

Amending clause.

Section 122. Section 66-1314, R. C. M. 1947, is amended to read as follows:

Violations—penalties.

"Section 66-1314. **Penalty for violations.** Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars ($200.00) and not more than five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be *deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry.*"

Fines—deposit in earmarked revenue fund.

Amending clause.

Section 123. Section 66-2333, R. C. M. 1947, is amended to read as follows:

Deposit in earmarked revenue fund for use of state board of registration for professional engineers and land surveyors.

"Section 66-2333. **Receipts and disbursements—secretary—assistants.** The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall *deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors.* The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board. The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 66-2329. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work."

Bond of secretary.

Salary.

Board may employ assistants.

Amending clause

Section 124. Section 66-2104, R. C. M. 1947, is amended to read as follows:

Abstractors board of examiners—per diem, mileage, expenses.

"Section 66-2104. **Compensation of members of board—disposition of funds.** Each member of the board shall receive a compensation of five dollars ($5.00) per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive ten cents ($0.10) per mile for each mile actually traveled, and the further sum of five dollars



HeinOnline -- 1963 vol. I 356 1963

($5.00) per day for expenses while absent from home upon business connected with the board.

All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the *earmarked revenue fund for the use of the abstractors board of examiners.*"

Deposit in earmarked revenue fund for use of board.

Section 125. Section 66-2106, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-2106. **Reports of board.** Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act."

Biennial report to governor.

Section 126. Section 66-2203, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-2203. **Expenses and funds—records and reports.** Each member of the board shall be entitled to receive all necessary traveling and subsistence expenses. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars ($500.00) per annum. The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. *All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of veterinary examiners.* Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve (12) months immediately preceding."

Travel and subsistence—state board of veterinary examiners.

Additional salary—secretary-treasurer.

Bond.

Minutes and records—public inspection.

Deposit in earmarked revenue fund.

Annual report to governor.

Section 127. Section 66-2204, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-2204. **Applications for license to practice —examinations—fees.** Any citizen of the United States

License to practice as veterinarian.



HeinOnline -- 1963 vol. I 357 1963

who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars ($25.00), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Application—requirements.

Fee.

Examination.

Reciprocity.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medicia [medica] and therapeutics, livestock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Examination held in January and June.

Scope.

Said board shall consecutively number all applications received and note upon each the disposition made of it

Applications and licenses numbered consecutively.



HeinOnline -- 1963 vol. I 358 1963

and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a licesne without such examination.

Minimum grade—70%.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars ($25.00), and shall take another complete examination in all subjects.

Re-examination fee.

Temporary permit to practice.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to same person. A temporary permit shall not be issued to a person who has failed an examination given by the board."

Amending clause.

Section 128. Section 66-1008, R. C. M. 1947, is amended to read as follows:

Fee for examination—secretary—board of medical examiners.

"Section 66-1008. **Fees for examination for admittance—annual license.** (1) Candidates for examination shall pay in advance to the secretary of the board of medical examiners a fee of seventy-five dolars ($75.00), which fee shall defray the entire expenses of said candidate for examination before the board of medical examiners. Anyone failing to pass the required examination shall be entitled to a second examination within six (6) months without additional fee. Candidates who shall be granted certificates to practice medicine and surgery in the state of Montana under the reciprocity provisions of section 66-1003 without examination, shall, before receiving certificate of authorization to practice medicine in this state, pay to the secretary of the board of medical examiners a fee of one hundred dollars ($100.00).

Reciprocity.

Fee.



HeinOnline -- 1963 vol. I 359 1963

Annual registration fee—licensed physician and surgeon.

(2) In addition to the respective license fees required of applicants, every licensed physician and surgeon practicing within the state of Montana shall pay each and every year to the secretary of the board, an annual registration fee not to exceed the sum of ten dollars ($10.00), as may be prescribed by the board. The moneys so received from the foregoing and every other source, shall be turned over, by said secretary, to the state treasurer, and shall be by the state treasurer deposited in the *earmarked revenue fund for the use of the board of medical examiners.* In the event any person licensed to practice medicine absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of three dollars ($3.00) each year, or, at the discretion of the board, he may be reinstated upon the payment of a fee of three dollars ($3.00) for each year's absence.

Deposit in earmarked revenue fund.

Inactive fee.

Reinstatement fee.

(3) Such annual payments for registration shall be made prior to January first in each and every year, and receipt of certificate of annual registration therefor shall be issued by the secretary of the board. In case of default in the payment of the annual registration fee by any person licensed to practice medicine and surgery, his underlying certificate to practice medicine and surgery shall be revoked by the board upon thirty (30) days' notice given to the delinquent of the time and place of considering such revocation. A registered letter addressed to the last known address of the person failing to comply with the requirement of annual registration, as such address appears upon the records of the board, shall constitute sufficient notice of intention to revoke his underlying certificate, but no certificate shall be revoked for such nonpayment if the person authorized to practice medicine, and so notified, shall pay such annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of ten dollars ($10.00); provided further, that said board may collect any such dues by action at law."

Default in payment—revocation.

Notice.

Delinquency penalty.

Amending clause.

Section 129. Section 66-1009., R. C. M. 1947, is amended to read as follows:

"Section 66-1009. **Compensation and expenses allowed board member—employment of clerks and counsel—**



HeinOnline -- 1963 vol. I 360 1963

**secretary's compensation.** Each member of the board is hereby allowed the sum of twenty dollars ($20.00) per day and mileage while in the active and necessary discharge of his duties as a member of said board. The rate of mileage and attendance of witnesses before said board shall be the same as is now allowed in justice of the peace courts. The board must report annually on the first Monday of November to the governor, which report must show all the transactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees and mileage paid, and by whom received. The board may employ such clerical help and legal counsel as may be necessary to carry out the terms and provisions of this act. The secretary of the board shall receive such reasonable compensation for his services as may be fixed by said board."

Member of board allowed per diem and mileage.

Witnesses.

Annual report to governor.

Board may employ clerical help and legal counsel.

Secretary—salary.

Section 130. Section 66-607, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-607. **Disposal of moneys collected.** All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to *the earmarked revenue fund for the use of the state board of medical examiners.*"

Deposit in earmarked revenue fund for use of state board of medical examiners.

Section 131. Section 66-603, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-603. **Chiropody examiners—examinations — qualifications — schools — fees — nonresident practitioners.** (1) There is hereby created a state board of chiropody medical examiners consisting of one physician to be selected at its annual meeting by the state board of medical examiners from its membership, the secretary of the state board of medical examiners, and two chiropodists to be selected and to serve as hereinafter provided. The Montana association of chiropodists shall select six chiropodists from its membership, who shall be residents of and shall have engaged in the active practice of chiropody for at least two years in this state, and shall

State board of chiropody medical examiners.

Selection.



HeinOnline -- 1963 vol. I 361 1963

be of high integrity and ability. Within thirty days from and after the selection of said six (6) chiropodists as aforesaid, the governor of Montana shall appoint three (3) of their number and so designate the term of office of each, that the term of office of one member shall expire in one (1) year, one in two (2) years, and one in three (3) years, from date of appointment; annually thereafter, the governor shall appoint one member who shall be a licensed chiropodist possessing the qualifications hereinbefore mentioned who shall serve for a period of three (3) years or until his successor shall have been appointed by the governor. Should any vacancy arise on aforesaid board before the expiration of the term of office of any of the chiropodist members of said board, such vacancy shall be filled by appointment by the governor within thirty (30) days, such appointee to possess the qualifications heretofore stated, and to be selected from those remaining of the said six (6) chiropodists theretofore selected by the Montana association of chiropodists unless said number of selected chiropodists shall have been exhausted.

Appointment by governor.

Semi-annual examinations.

Application.

Requirements.

License without examination.

(2) Examinations shall be held semiannually at such places and time as the state board of chiropody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiropody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiropody. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiropody recognized as being in good standing by the Montana board of chiropody medical examiners, but after June 1st, 1941, no school of chiropody shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of chiropody. All chiropodists, actively engaged in the practice of chiropody one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon



HeinOnline -- 1963 vol. I 362 1963

furnishing proof thereof to said board of chiropody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiropodists of other states maintaining equal statutory requirements for the practice of chiropody and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars ($50.00) to *the secretary of the* board of medical examiners."

Reciprocity.

Fee.

Section 132. Section 66-608, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-608. **Compensation of examiners — expenses.** Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars ($5.00) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capitol. All printing, postage and other contingent expenses, necessarily incurred, shall be paid by the state board of medical examiners in the same manner as other expenses of the state board of medical examiners."

Members of board—per diem and expenses.

Secretary—expenses.

Section 133. Section 66-2503, R. C. M. 1947, enacted as section 3, chapter 39, laws of 1961, is amended to read as follows:

Amending clause.

"Section 66-2503. **Application for examination — examination fee.** Unless entitled to a license under section 66-2504 or 66-2505, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the secretary of the board of medical examiners at the time of filing his application a fee of twenty-five dollars ($25.00) *which shall be deposited in the earmarked revenue fund for the use of the board of medical examiners.* Anyone failing to pass the required examination shall be entitled to a second examination within six months without additional fee."

Application for license as physical therapist.

Fee—deposit in earmarked revenue fund for use of board of medical examiners.



HeinOnline -- 1963 vol. I 363 1963

Amending clause.

Section 134. Section 66-1527, R. C. M. 1947, is amended to read as follows:

Fines and fees—deposit in earmarked revenue fund for use of state board of pharmacy.

"Section 66-1527. **Disposition of fees and fines.** All *fines paid under the provisions of this act and all* fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy *and by it deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state board of pharmacy.*"

Amending clause.

Section 135. Section 66-809, R. C. M. 1947, is amended to read as follows:

Members of board—per diem and expenses.

"Section 66-809. **Compensation of members of board** —*deposit of receipts in state treasury.* Each member of the board shall receive, as compensation for his or her services, the sum of ten dollars ($10.00) for each day's actual attendance at board meetings, not to exceed three consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. *All receipts of the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state examining board of cosmetology.* The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance of board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners."

Receipts of board—deposit in earmarked revenue fund for use of state examining board of cosmetology.

Secretary—salary and expenses.

Amending clause.

Section 136. Section 82-702, R. C. M. 1947, is amended to read as follows:

State board of embalmers and funeral directors.

"Section 82-702. **Powers of board—annual meetings, compensation, employment—treasurer of board—bond.** All records, files and funds in the office of the Montana state board of health, or in the possession of any and all persons whomsoever, in connection with the administration, supervision and control of embalmers and funeral directors of the state of Montana, shall be delivered to the board created under this act. Said board shall have

Powers.



HeinOnline -- 1963 vol. I 364 1963

the power to select a president, secretary and treasurer; and to adopt and promulgate and enforce such rules and regulations for the transaction of its business and the management of its affairs, the betterment and promotion of the educational standards of the profession of embalming and funeral directing and the standards of service and practice to be followed in the profession of embalming and funeral directing in the state of Montana as it deems expedient and consistent with the laws of the state of Montana. Said board may, by its rules and regulations, provide for the care or disposition of dead human bodies in sparsely populated sections of the state of Montana, when it is impossible to procure the services of a licensed embalmer.

Examination for license.

The board shall hold not less than one meeting annually for the purpose of examining applicants for licenses, such meetings to be held on the second Wednesday in July, at Helena, Montana. Time and place of each such meeting shall be given by publication in three (3) daily newspapers of general circulation, each in different locations in the state, said publication to be once a week for two (2) consecutive weeks immediately preceding each such meeting. All manuscript submitted as answers to questions in an examination shall be kept on file for six months by the board and shall be made available for review by the applicant in the presence of a member of the board, or shall be made available in case the applicant appeals.

Notice by publication.

Examination answers kept six months.

Publication—rules and regulations.

The board shall publish in its rules and regulations the subjects to be covered in the examination and the standards to be attained thereon.

Other meetings.

The board may hold such other meetings as it may deem necessary and may transact any business at any such meeting, and notice of the time, place and purpose of such meeting shall be given to the members of the board. Three (3) or more members shall comprise a quorum authorizing the board to transact the business prescribed under this act.

Members of board—expenses.

All of the members of the said board shall serve without compensation, providing that each member shall be reimbursed for his necessary traveling expenses, and the necessary expense incident to his attendance upon the



HeinOnline -- 1963 vol. I 365 1963

Secretary—salary and expenses.

business of the board, and providing the secretary shall receive and be paid an annual salary, the amount and method of payment of which shall be fixed by said board, and in addition thereto, such secretary shall receive his necessary traveling and other incidental expenses as are incurred in the performance of such duties.

Board may employ help.

The board may employ such clerical or other help or assistance as may be necessary to carry out the provisions of this act, and the terms of such employment shall be designated by the board.

Board may employ investigator—per diem and expenses.

The board may, in its discretion, employ and pay any licensed embalmer on a per diem basis and necessary expenses incident to such employment in such amount as shall be fixed by the board, for the purpose of investigating and reporting to the board violations of the laws of the state of Montana in relation to embalming and funeral directing.

Treasurer shall give bond.

The treasurer of the board shall give bond to the state of Montana in such sum as the board shall direct, and such bond shall contain two (2) or more sureties, or in a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with the oath of office and the approval of the board endorsed thereon, shall be deposited with the treasurer of the state of Montana."

Amending clause.

Section 137. Section 82-709, R. C. M. 1947, is amended to read as follows:

Fees—deposit in earmarked revenue fund for use of board.

"Section 82-709. **Disposition of fees collected.** All fees collected under the provisions of this act shall be paid to the treasurer of the board and by him deposited monthly with the treasurer of the state, in *earmarked revenue fund for the use of the board of embalmers and funeral directors.*"

Amending clause.

Section 138. Section 66-407, R. C. M. 1947, is amended to read as follows:

Board shall elect officers—adopt seal.

Record.

"Section 66-407. **Officers, official seal, bond.** The board shall elect a president, secretary and treasurer. It shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings of the board. At least once a



HeinOnline -- 1963 vol. I 366 1963

month *all moneys collected by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of barber examiners.* The secretary and treasurer shall each furnish a surety bond in the sum of five thousand dollars ($5,000.00), for the faithful performance of his duties; said bond to be filed with the secretary of state and shall be approved by the governor."

Moneys—deposit in earmarked revenue fund for use of board of barber examiners.

Bonds—secretary and treasurer.

Section 139. Section 66-408, R. C. M. 1947, is amended to read as follows:

Amending clause

"Section 66-408. **Compensation, funds and reports.** Each member of the board shall receive a compensation of fifteen dollars ($15.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

Members of board—per diem and expenses.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report."

Annual report to governor.

Section 140. Section 66-108, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-108. **Fees payable by applicants for examination—disposition of fees.** Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee.

Application for examination.

Fee.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the *earmarked revenue fund for the use of the board of architectural examiners.*"

Deposit in earmarked revenue fund for use of board of architectural examiners.

Section 141. Section 66-109, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-109 **Compensation of members of board—disposition and use of funds—annual report.** Each member of the examining board is hereby allowed the sum of five ($5.00) per day and mileage at the rate of ten cents (10¢) per mile while in the discharge of his actual duties.

Members of board—per diem and mileage.

And all fees and moneys received for licenses from practicing architects shall be deposited with the state trea-

Deposit—license fees.



HeinOnline -- 1963 vol. I 367 1963

surer to the credit of the *earmarked revenue fund for the use of the board of architectural examiners.*

Annual report to governor.

*T*he members of the said board shall report annually to the governor on the first Monday of January of each year, which report must show all the transactions of the board, giving the number and names of all applicants, and the number and names of those rejected, and those to whom certificates have been issued, the expenses, the fees and mileage paid, *and* the amount of money received."

Amending clause.

Section 142. Section 66-513, R. C. M. 1947, is amended to read as follows:

Fees—deposit in earmarked revenue fund for use of state board of chiropractic examiners.

"Section 66-513. **Disposition of fees—receipts and disbursements—per diem and mileage.** All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in *the earmarked revenue fund for the use of the state board of chiropractic examiners.*

Annual report to governor.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

Members of board—per diem and mileage.

The members of said board shall receive a per diem of twenty-five dollars ($25.00) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily traveled in going to and from any meeting of said board."

Amending clause.

Section 143. Section 66-2403, R. C. M. 1947, is amended to read as follows:

Governor shall appoint board of plumbing examiners.

"Section 66-2403. **Board of plumbing examiners—appointment—terms—compensation—examination of applicants.** Within sixty (60) days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of five members—one master plumber, one journeyman plumber, who shall of legal age, residents of Montana for more than one

Qualifications.



HeinOnline -- 1963 vol. I 368 1963

year and shall have been at least five out of the last eight years, immediately preceding their appointment, duly licensed master or journeyman plumbers, one registered professional engineer, qualified in mechanical engineering, one member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the appointed representative of the Montana state board of health, who shall be a sanitary engineer and who shall be the secretary of the state board of plumbing examiners. The office of the engineer of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four years from the date of their appointment, providing however, the first board of plumbing examiners shall serve as follows: one member for one year, one member for two years, one member for three years and one member for your years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four years. The journeyman plumber whose term would next expire after passage and approval of this act is hereby removed from said board and in his place and stead shall be installed said registered professional engineer, qualified in mechanical engineering. The members of the said board shall be entitled to a compensation of twenty dolars ($20.00) per diem, each, for each and every day while actually engaged in the work of the board. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation

Term.

Members of board—per diem.

Examination of applicants for license as plumber.



HeinOnline -- 1963 vol. I 369 1963

of a master plumber or journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana."

Amending clause.

Section 144. Section 66-2407, R. C. M. 1947, is amended to read as follows:

License fees—deposit in earmarked revenue fund for use of board of plumbing examiners.

"Section 66-2407. **Disposition of license fees.** All moneys paid for state license fees as provided for in this act shall be *deposited with* the state treasurer *to the credit of the earmarked revenue fund for the use of the board of plumbing examiners.*"

Amending clause.

Section 145. Section 66-1405, R. C. M. 1947, is amended to read as follows:

"Section 66-1405. **Subjects of examination — appeal.**

Examination of applicants for license to practice osteopathy.

(1) All persons, after March 1, 1901, commencing the practice of osteopathy in this state, in any of its branches, shall apply to said board for a license to do so, and such applicant at the time and place designated by said board, shall submit to an examination in the following branches to wit: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy, and such other branches as are taught in well regulated and recognized schools of osteopathy and deemed advisable by said board and shall present evidence of having actually attended as required in section 66-1403 a legally authorized and regularly conducted school of osteopathy, recognized by said board of osteopathic examiners, except as otherwise provided in section 66-1402 of this code.

Appeal—district court.

(2) All examination papers on subjects peculiar to esteopathy shall be examined and their sufficiency passed upon by members of said board, whose decision shall be final thereon subject, however, to the right of appeal, which appeal shall be to the district court of the county in which the examination is held and said district court shall review such examination without a jury and shall have the right to take testimony thereon and the decision of such district court shall be also subject to the right of appeal to the supreme court by any persons aggrieved thereby, and upon such appeal the supreme court shall

Appeal—supreme court.



HeinOnline -- 1963 vol. I 370 1963

have the right to consider questions of both law and fact, and said board shall cause such examination to be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of said board, attested by the seal thereof. The fee for such examination and license shall be twenty dollars ($20.00).

License.

Fee.

Section 146. Section 66-1410, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-1410. **Compensation of board—report to governor.** Each of the members of said board may receive as compensation the sum of five dollars ($5.00) for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. The fees coming into said board *shall be deposited into the state treasury to the credit of the earmarked revenue fund for the use of the state board of osteopathic examiners.* Said board shall make an annual report of its proceedings to the governor of the state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year."

Members of board—per diem and expenses.

Fees—deposit in earmarked revenue fund for use of state board of osteopathic examiners.

Annual report to governor.

Section 147. Section 66-904, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-904. **Meetings — notice—quorum—funds —bond required of secretary-treasurer — duties — accounts.** The board shall meet at least once in each year or oftener at any point in the state of Montana at the call of the president and the secretary-treaurer. Five days' notice must be given by the secretary-treasurer to all board members of the time and place of the meeting of said board. The regular annual meeting of the board shall be held on the second Monday in July of each year. Three members of said board shall constitute a quorum for the transaction of business and its proceedings shall be open to public inspection in all cases of public interest.

Meetings.

Notice.

Quorum.



HeinOnline -- 1963 vol. I 371 1963

Moneys—deposit in earmarked revenue fund for use of state board of dental examiners.

All moneys received by the board and/or its officers for the board, shall be *deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners.*

Secretary-treasurer—bond.

The secretary-treasurer shall give bond in such amount as the board may from time to time require, which bond shall be approved by the board, and he shall keep a complete record of all meetings and proceedings of which records the secretary-treasurer shall be custodian, and he shall keep a true and complete account of all moneys received and disbursements made by the board and by him as such officer. The secretary-treasurer shall, not later than the fifteenth day of January of each year, cause to be prepared, a full, true and accurate account of all moneys received, and of all expenditures made, including per diem and expenses of each board member, during the last preceding calendar year. A copy of such account shall be delivered to the governor of Montana and like copies shall be mailed to every registered dentist in the state of Montana."

Records.

Annual account to governor and registered dentists.

Amending clause.

Section 148. Section 66-906, R. C. M. 1947, is amended to read as follows:

"Section 66-906. **Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.** (1) The certificate in this act provided for shall entitle the holder thereof to practice dentistry in any county in the state of Montana, provided such certificate shall first be filed for registration and registered in the office of the county recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first registered in the office of the recorder of such county as herein provided; provided further that any such holder of a certificate may practice in more than one or in any number of counties in this state on having such certificate registered in each such counties in which such holder desires to practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any such certificate issued

Certificate to practice dentistry—registered in office of county clerk.

Duplicate of lost certificate.



HeinOnline -- 1963 vol. I 372 1963

under the provisions of this act, issue a duplicate certificate in place thereof, and a fee of five dollars ($5.00) shall be charged for issuing such certificate. Any person failing to pass his first examination before such board, may demand a second examination at any subsequent meeting of the said board held for the purpose of examining candidates, and no fee shall be charged for any subsequent examination.

Fee.

Re-examination.

(2) Any dentist who has been (1) lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, and (2) who is a graduate of an accredited four year high school or has actual scholastic credits equivalent to a four year high school course and (3) who is a graduate of a recognized dental school or college, and (4) who has been lawfully and continuously engaged in the practice of dentistry for five years or more immediately before filing his application to practice in this state and (5) who shall deposit in person with the secretary-treasurer of the board a duly attested certificate from the examining board of the state or territory in which he is registered and/or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, (6) upon the payment of a fee of fifty dollars ($50.00) and (7) after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory. Provided, however, that no license shall be issued without an examination in theory to any such applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of dentistry within its own borders to dentists heretofore and hereafter licensed by this state, and removing to such other state; and provided, further, that the state board of dental examiners of the state of Montana shall have power to enter into reciprocal relations with similar boards of other states whose laws are practically identical with the provisions of this act.

Reciprocity—qualifications.

Fee.

Examination.

(3) In addition to the license fee required of appli- Annual license fee.



HeinOnline -- 1963 vol. I 373 1963

cants, every licensed dentist practicing within the state of Montana shall pay in each and every year to the secretary treasurer of the board, the sum of seven dollars ($7.00), as a license fee for such year. In the event the payment of the annual license fee is not made prior to the first day of May by either practicing dentists or dentists not engaged in the active practice within the state of Montana, and additional penalty of three dollars ($3.00) shall be charged for late payment which shall be in addition to any other fee requirements of this section.

Penalty for late payment.

Inactive license.

(4) In the event any registered dentist absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of five dollars ($5.00) each year, or at the discretion of the board he may be reinstated upon the payment of a fee of five dollars ($5.00) for each year's absence. Such annual payments shall be made prior to May first in each and every year, and receipt or certificate therefor shall be issued by the secretary-treasurer of the board. In case of default in payment of annual license fee by any dentist, his license shall be revoked by the board upon thirty days' notice given to the deliquent of the time and place of considering such revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as such address appears upon the records of the board, shall constitute sufficient notice of revocation of license, but no license shall be revoked for such nonpayment if the dentist so notified shall pay such license fee plus the late payment penalty of three dollars ($3.00) before or at the time fixed for consideration of revocation together with an additional deliquency penalty of five dollars ($5.00); provided further that said board may collect any such dues by law."

Fee.

Reinstatement.

Fee.

Default—revocation.

Notice.

Penalty fees.

Amending clause.

Section 149. Section 66-909, R. C. M. 1947, is amended to read as follows:

Members of board—per diem and transportation.

"Section 66-909. **Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation.** The sum of fifteen dollars ($15.00) per day for each day actually engaged in the duties of his office and the amount of the actual railroad



HeinOnline -- 1963 vol. I 374 1963

and Pullman fares to and from his place of residence to the place where the meetings of said board are held, shall be paid to each member of said board attending such meetings. Meetings held for the purpose of examining candidates for license to practice dentistry in Montana shall in no case exceed six days. Said board may, if by it deemed advisable, with the consent of the county attorney of any county, employ and compensate special counsel to assist in the prosecution in the courts of such county and in the supreme court of this state, of any offense alleged to have been committed under the provisions of this act in such county. The secretary-treasurer of the board shall receive such reasonable compensation for his services as said board may fix."

Meetings for examinations limited to six days.
Board may employ special counsel.
Salary—secretary-treasurer.

Section 150. Section 66-919, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 66-919. **Practicing dentistry without certificate, penalty for—disposition of fines.** Any person who, as principal, agent, employer, employee or assistant, shall practice dentistry in any manner whatever, or who shall do any act of dentistry, without having first secured his or her certificate to practice dentistry from the state board of dental examiners of the state of Montana entitling him or her to so practice in this state, shall be guilty of a misdemeanor, and upon conviction in a district court shall be fined in any sum not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or be confined for any period not exceeding six (6) months in the county jail, for each and every offense. All fines imposed and collected under this act shall be paid into the treasury of the county in which such suits, actions or proceedings shall have been commenced. All moneys thus paid into the treasury over and above the amount necessary to reimburse the county for any expense incurred by said county, in any suit, action or proceeding brought under the provisions of this act, shall be paid, before the first day of January of each year, to the treasurer of the state of Montana, *for deposit in the earmarked revenue fund for the use of the state board of dental examiners.*"

Practising dentistry without certificate—penalties.
Fines.
Deposit in earmarked revenue fund for use of state board of dental examiners.

Section 151. Section 66-925, R. C. M. 1947, is amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. I 375 1963

"Montana dentistry regulation act."

"Section 66-925. **Citation of act—regulatory board.** This act may be known and cited as the 'Montana dentistry regulation act'."

Amending clause.

Section 152. Section 66-2604, R. C. M. 1947, is amended to read as follows:

Water well contractor's examining board.

"Section 66-2604. **Water well contractor's examining board—members—terms—oath—seal—employees.** (1) There is hereby created the water well contractor's examining board of the state of Montana.

Members.

State engineer.

Director.

Governor shall appoint one.

Qualifications.

(2) The water well contractor's examining board of the state of Montana shall be composed of three (3) persons. One (1) of said persons shall be the state engineer, appointed, qualified and acting pursuant to the provisions of section 81-2006; one (1) of said persons shall be the director of the divisions of environmental sanitation of the state board of health of the state of Montana; and one (1) of said persons shall be appointed by the governor with the concurrence of the state senate. In making this appointment, the governor may consider recommendations made to him by the Montana water well drillers association, and shall be from the water well drilling industry. The appointive member of the said board shall serve for a term of three (3) years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and the laws of this state. The appointive member of the board shall have been a bona fide resident of this state for a period of at least three (3) years prior to such appointment and shall have had at least five (5) years' experience in the water well drilling business.

Oath—appointive member.

(3) The appointive member of the board shall, upon entering on the duties of his office, take and subscribe to the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state of the state of Montana.

Seal.

(4) The board shall have a seal with the words engraved thereon: 'Water Well Contractor's Examining Board', and such seal shall be affixed to all writs, authentication of records, and other official proceedings of



HeinOnline -- 1963 vol. I 376 1963

the board. The courts of this state shall take judicial notice of such seal.

Board may employ secretary.

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part time basis or upon a full time basis. The appointed member of the board shall receive, as compensation for his services, the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board."

Appointed member—per diem and expenses.

Amending clause.

Section 153. Section 66-2605, R. C. M. 1947, is amended to read as follows:

"Section 66-2605. **Powers and duties of the board.**

Powers and duties.

(1) The board has jurisdiction to exercise effectively the authority granted to it by this act.

Rules and regulations.

(2) The board has authority, and it is its duty, to promulgate, publish and enforce reasonable rules and regulations and orders to effectuate the purposes and intent of this act as expressed herein.

Inspection.

(3) The board, or its authorized representative, shall have the power and authority to inspect water wells drilled, or drilling, and shall have access to the same at all reasonable times.

Program.

(4) The board shall have authority to establish a program, or programs, of training water well drillers or prospective water well drillers and apprentices, the more effectively to carry out the purposes and intent of this act.

Public hearing.

(5) Within one hundred twenty (120) days of the effective date of this act, the board shall organize and conduct a public hearing for the purpose of adopting reasonable rules and regulations for the future conduct of its business. Such hearing shall be had only after at least ten (10) days' printed notice of the same has been

Notice.



HeinOnline -- 1963 vol. I 377 1963

Publication. Printing.

given, announcing the hearing, the time, the place and the purpose therefor. Publication shall be made in at least five (5) daily newspapers in this state. Following such hearing, said rules and regulations shall be adopted and compiled in printed form for distribution to interested persons. The board shall charge a fee of fifty cents (50¢) per copy, and sums realized from such sale shall be deposited with the treasurer of this state in *the earmarked revenue fund for the use of the water well contractor's examining board.*

Fee.

Deposit in earmarked revenue fund for use of board.

Licenses.

(6) The board has authority, and it is its duty, to issue licenses to qualified water well contractors in this state; to cause examination to be made of applicants for licenses; to revoke or suspend licenses upon good cause shown after their issuance, after notice to the person affected and an opportunity for him to be heard; to reinstate licenses previously revoked when justification therefor is shown to the satisfaction of the board; and, generally, to perform any and all duties which will carry out the purposes and intent of this act as expressed herein."

Amending clause.

Section 154. Section 66-2606, R. C. M. 1947, is amended to read as follows:

Application for contractor's license.

"Section 66-2606. **Water well contractor's licenses.** Any person desiring to engage in the drilling, making or construction of one (1) or more wells for underground water in this state shall first file an application with the board for a contractor's license, setting out his qualifications therefor, the equipment proposed to be used in such contracting, and such other business as may be required by the board, all upon forms to be adopted by the board.

Fee.

Deposit in earmarked revenue fund for use of examining board.

License to construct water wells.

The board shall charge a fee of one hundred dollars ($100.00) for the filing of such of application by any person, and it shall not act upon any application until such fee has been paid. All fees collected hereunder shall be deposited with the state treasurer in *the earmarked revenue fund for the use of the water well contractor's examining board.* A license to construct water wells shall be issued to any applicant if, in the opinion of the board, such applicant is qualified to conduct water well construction operations. In the granting of such licenses, the board shall have due regard for the interest of the state of Montana in the protection of its underground waters. Applicants



HeinOnline -- 1963 vol. I 378 1963

for licenses hereunder who have engaged in the business of water well drilling or construction for a period of more than three (3) years prior to the effective date of this act, and who have been bona fide residents of the state of Montana for more than one (1) year preceding the date of application, may, at any time within one (1) year after the effective date of this act make application for license hereunder and payment of the fee of one hundred dollars ($100.00), as herein provided, and the board shall issue a license to any such applicant without examination, when he shall submit evidence, under oath, satisfactory to the board that he is of good character, that he was engaged in the occupation of water well contractor at the time this act became effective, and that his work as such is satisfactory to the board. All other applicants shall be subject to examination as hereinafter provided."

Fee.

Oath.

Section 155. Section 46-2306, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 46-2306. **Compensation of members - auditing and payment of claims.** The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars ($10.00) per diem for each day actually in attendance at such board meetings. The per diem of each member of the board shall be limited to not exceed the amount of five hundred dollars ($500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

Members of commission—per diem and expenses.

Limitation on per diem.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the *moneys of the Montana* grass conservation *commission in the earmarked revenue* fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act."

Audit of claims.

Payment from moneys of grass conservation commission in earmarked revenue fund.

Report to governor and state districts.



HeinOnline -- 1963 vol. I 379 1963

Amending clause.

Section 156. Section 46-2331, R. C. M. 1947, is amended to read as follows:

Commission's authority to impose grazing fees—limitation.

"Section 46-2331. **Fees may be imposed by commission against districts.** The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission, and said state grass conservation commission shall from such fees and collections pay one per cent (1%) of said fees and collections to the state treasurer to be placed in the general fund, and shall repay to the state treasurer of Montana any and all appropriations provided by the state of Montana for the establishment of this commission and the administration of this act when so collected. When such appropriation by the state of Montana is repaid, the balance of such funds shall be held in the *earmarked revenue* fund, to be expended by order and direction of the state grass conservation commission for the further administration of the commission, and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided. If any state district fails or refuses to pay such fee or fees on or before the first day of May of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district."

1% deposit in general fund.

Repayment of appropriation.

Balance—deposit in earmarked revenue fund—use.

Default in payment.

Remedy.

Amending clause.

Section 157. Section 27-409, R. C. M. 1947, is amended to read as follows:

License to produce or sell milk.

"Section 27-409. **Licenses** *disposition of income.* No producer, producer-distributor, or distributor shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board and without being licensed under this act by the milk control board. The annual fee for such license from the milk control board shall be two dollars ($2.00), shall be due and

Fee.



HeinOnline -- 1963 vol. I 380 1963

payable on or before the first day of July, commencing in the year 1959 and shall be deposited by said board to the credit of the general fund.

Levy of assessment.

In addition to said annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee of not more than five cents (5¢) per hundred weight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee of not more than two and one-half cents (2½¢) per hundred weight on the total volume of all milk subject to this act sold by a producer.

(c) A fee of not more than two and one-half cents (2½¢) per hundred weight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

Payment quarterly.

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth (15th) day of July, October, January and April of each year, commencing in July of 1959, and the amount of such assessment shall be computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Computation of assessment.

Failure to pay—termination of license.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be effected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

Reinstatement—delinquency fee.

Deposit in earmarked revenue fund—use.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in *the earmarked revenue* fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of milk control *board moneys in such fund.*



HeinOnline -- 1963 vol. I 381 1963

Board may fix lesser rates.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year."

Amending clause.

Section 158. Section 27-417, R. C. M. 1947, is amended to read as follows:

Fines—deposit in earmarked revenue fund.

"Section 27-417. **Disposition of fines.** All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All *fines* received by the board shall be deposited with the state treasurer and shall be placed by him in *the earmarked revenue* fund. All such fines assessed for violations of this act, are hereby *earmarked* for the purposes of this act."

Amending clause.

Section 159. Section 26-121, R. C. M. 1947, is amended to read as follows:

State fish and game moneys—deposit in earmarked revenue fund.

"Section 26-121. **State fish and game** *moneys.* (1) All *moneys* collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from the appropriations, or received by the commission from any other *state* source, shall be turned over to the state treasurer, and placed by him in *the earmarked revenue fund to the credit of the fish and game commission,* provided that out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution. *Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the fish and game commission.*

Costs of prosecution paid to county.

Federal funds—deposit in federal and private revenue fund.

Use of moneys.

(2) Said *moneys are* hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the state fish and game commission under the terms of this act, and said *moneys* shall be expended for any and all such purposes, by said commission, subject to appropriation by the



HeinOnline -- 1963 vol. I 382 1963

legislative assembly of each session; provided, however, that all equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission must be requisitioned for through the state purchasing agent, and the state purchasing agent shall purchase all necessary equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission, without charge to the commission for such services."

Requisitions through state purchasing agent.

*(3) The fish and game fund is abolished. Any reference to the fish and game fund in this code shall be taken to mean fish and game moneys in the earmarked revenue fund and federal and private revenue fund.*

Fish and game fund abolished.

Section 160. Section 60-145, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 60-145. **Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation** *moneys.* A. For the purpose of providing funds for defraying the expenses of the operation and enforcement of this act, and expenses of said oil and gas conservation commission, the operators and producers of oil and gas shall be required to pay, and they will pay, an assessment not to exceed the amounts set forth in the following schedule on each and every barrel of crude petroleum originally produced, saved and marketed or stored within the state of Montana, or exported from the state of Montana, and on each and every ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state of Montana, or exported therefrom, to wit:

Assessment of oil and gas operators and producers—use of proceeds.

Crude petroleum.

Natural gas.

(1) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed one-fourth of one cent (¼¢) per barrel;

(2) On leases on which wells are producing an average of more than twenty-five (25) barrals of crude petroleum per day, an assessment not to exceed one-half of one cent (½¢) per barrel;

(3) And, on wells producing, saving and marketing, storing, or exporting, natural gas, said operators and



HeinOnline -- 1963 vol. I 383 1963

producers shall pay an assessment not to exceed one (1) mill per ten thousand (10,000) cubic feet of natural gas. Such payments shall be made during the time the oil and gas conservation commission is in existence. The commission shall by order, without prior notice and/or hearing, fix the amount of such assessments in the first instance and may, from time to time, without prior notice and/or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; provided, however, that in no event shall the assessments fixed by the commission exceed the said limits hereinabove prescribed. The amounts of such assessments to be fixed by the commission in the first instance and from time to time as herein provided, shall be a percentage factor (not to exceed one hundred per cent (100%) of the rates set forth in subparagraphs (1), (2) and (3) above, and the same percentage factor shall be used and applied by the commission in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in said subparagraphs (1), (2) and (3) above. The producers of said crude petroleum and natural gas shall pay such assessments on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and said producers shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others as provided for in section 84-6208.

"Lease" defined.

For the purposes of this section, a 'lease' shall mean that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one parti-



HeinOnline -- 1963 vol. I 384 1963

cular unit agreement shall be considered as one lease relative to payments to be made under this section.

Drilling permit—fees.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well, shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3,500) feet or less, twenty-five dollars ($25.00); from thirty-five hundred and one (3,501) feet to seven thousand (7,000) feet, seventy-five dollars ($75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars ($150.00).

Quarterly statement of production required.

B. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of January, April, July and October, of each and every calendar year, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the commission, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding three (3) calendar months, and containing such other information as the commission may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in subsection A. of this section, above, for the period covered by such statement. Each producer of natural gas in the state of Montana shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in said subsection A. of this section, above, at such times and for such periods as may be prescribed by regulation of the commission. Any producer carrying on business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

Payment of assessment.

Delinquent payment—penalty and interest.

C. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five percent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the commision it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

Duty of attorney general.



HeinOnline -- 1963 vol. I 385 1963

Deposit in earmarked revenue fund—use.

D. All money collected under the provisions of this act shall be deposited in *the earmarked revenue* fund by the state treasurer of the state of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all *such* moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any *such money* remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

Approval.

Commission may employ secretary and other personnel.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.''

Limitation on expenditures.

Members—expenses.

Amending clause.

Section 161. Section 60-147, R. C. M. 1947, is amended to read as follows:

Jurisdiction—oil and gas conservation commission.

"Section 60-147. **Transfer of jurisdiction and record.** On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody, property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from oil and gas conservation commission *moneys, in the earmarked revenue fund* upon proper vouchers, by the state treasurer; that the

Payment of expenditures.



HeinOnline -- 1963 vol. I 386 1963

said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.''

Transfer of property and records free and clear.

Section 162. Section 82-308, R. C. M. 1947, is amended to read as follows:

Amending clause.

''Section 82-308. **Report of ticket sales—tax on gross receipts—disposition of tax moneys received.** Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall, within twenty-four hours after the determination of any boxing, sparring or wrestling contest or exhibition, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such boxing, sparring or wrestling contest or exhibition and the amount of gross proceeds thereof, and such other matters as the commission may prescribe, and shall also within the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts after deducting the federal admission tax if any from the sale of tickets of admission to such boxing, sparring or wrestling match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commision, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in *the earmarked revenue fund* and used exclusively for the purposes herein provided. The moneys so received and held by the state shall be used and devoted for the expenses above specified and the balance to be held and retained exclusively for the use of the veterans' memorial fund commission as prescribed in section 78-302. Such funds to be drawn upon and expended only upon proper and legal claims. All *such* moneys in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state moneys.''

Report of ticket sales—boxing and wrestling.

Payment of tax—5% of gross receipts after federal tax deduction.

Deposit in earmarked revenue fund—use.

Investment authorized.

Section 163. Section 78-302, R. C. M. 1947, is amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. I 387 1963

Commission controls veterans' memorial moneys—use.

"Section 78-302. **Commission to control veterans' memorial** *moneys.* The *moneys deposited in the earmarked revenue fund as required by section 82-308 are* under the exclusive control and jurisdiction of said commission which is empowered to expend *such moneys* for the construction, maintenance, furniture, dioramas, displays, works of art and workmanship for the veterans' quarters of the veterans'-pioneers' memorial building and the necessary expenses of the commission."

Amending clause.

Section 164. Section 92-116, R. C. M. 1947, is amended to read as follows:

Moneys collected by industrial accident board—deposit in earmarked revenue fund.

"Section 92-116. *Administrative* **expenses to be paid from what** *moneys. The following moneys collected by the industrial accident board shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the administrative expenses of the board:*

Fees and fines.

(1) All fees *and fines* provided in sections 92-119, *92-820, 92-1334 and 92-1358,* Revised Codes of Montana, 1947;

Assessments—Plan No. 1.

(2) All assessments paid to the board by employers who elect to become bound by Plan No. 1 of this act;

Assessments—Plan No. 2.

(3) All assessments paid to the board of insurers who insure employers under Plan No. 2 of the act;

Fees.

(4) All fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

Assessments—account in agency fund.

(5) All assessments levied against the industrial insurance *account in the agency* fund as provided by this act.

Two accounts—general account—industrial insurance account.

Said *moneys* shall be divided *by the board* into two (2) accounts, to be known, respectively, as the general account and the industrial insurance account. The general account

Credits and debits.

shall be credited with all of the assessments and fees described in items (1), (2), (3) and (4) above. The assessments described in item (5) above shall be allocated between and credited to, the general account and the industrial insurance account, respectively, in the manner and proportions hereinafter provided. The general account shall be debited with expenses incurred by the board in the general administration of the provisions of this act, including the salaries of its members, officers and employees, and the actual and necessary traveling expenses and disbursements of such members, officers



HeinOnline -- 1963 vol. I 388 1963

and employees, incurred while on the business of the board either within or without the state, other than any such salaries, disbursements and expenses, or portions thereof, incurred in the operation or administration of the industrial insurance *account in the agency fund.* The industrial insurance account shall be debited with all expenses, disbursements and salaries which are incurred in the administration or operation of the industrial insurance *account in the agency* fund, including a portion of the salaries of the members of the board and its officers and employees, commensurate to the time spent by them on *such* business, and also the cost of inspections and examinations of places of employment covered under Plan No. 3. The *moneys* in each of said accounts shall be used exclusively for the purposes herein described with respect to each such account, and any balance remaining in either of said accounts shall not be transferred to the other. Disbursements from industrial administration *moneys* shall be made after being approved by the board upon claim therefor.

Approval of disbursements.

At the beginning of each fiscal year the board shall levy against the industrial insurance *account in the agency* fund an assessment in an amount not exceeding ten per cent (10%) of the gross annual direct premium income for the previous fiscal year, less return premiums, and said assessment shall be paid forthwith by the treasurer into the industrial administration *moneys in the earmarked revenue* fund. The amount of said assessment shall be allocated and credited as follows, to-wit: Sixty-two per cent (62%) thereof to the said industrial insurance account, and the balance thereof to the said general account."

Annual levy by board against industrial insurance account in agency fund—limitation—transfer.

Allocation.

Section 165. Section 92-119, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 92-119. **Fees of board.** The board shall have power and authority to charge and collect the following fees:

Authority to collect fees.

1. For copies of papers and records not required to be certified or otherwise authenticated by the board, fifteen cents (15¢) for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, twenty cents (20¢) for each folio.

Copies



HeinOnline -- 1963 vol. I 389 1963

Publications.

2. To fix and collect reasonable charges for publications issued under its authority.

Deposit in earmarked revenue fund.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the state, to the credit of the *earmarked revenue* fund, and shall be accompanied by detailed statement thereof."

Amending clause.

Section 166. Section 92-820, R. C. M. 1947, is amended to read as follows:

Books, records, payrolls of employer—open to inspection.

"Section 92-820. **Books, records and pay-rolls to be open to inspection.** The books, records, and pay-rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay-roll, the number of men employed, and such other information as may be necessary for the board and its management under this

Refusal—penalty.

act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of one hundred

Civil action.

dollars for each offense, to be collected by civil action in the name of the state, and paid into the *state treasury*."

Amending clause.

Section 167. Section 69-1516, R. C. M. 1947, is amended to read as follows:

Annual renewal—certificates of license to engineers.

"Section 69-1516. **Certificates must be renewed yearly—disposition of moneys.** All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is two dollars

Fee.

Default—30 days.

($2.00) in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license

Armed services—60 days after discharge.

of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days (60) from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

Deposit in earmarked revenue fund.

All moneys collected by virtue of the provisions of this act must be paid into the state treasury once in each month and credited to the *earmarked revenue* fund."



HeinOnline -- 1963 vol. I 390 1963

Amending clause.

Section 168. Section 92-840, R. C. M. 1947, is amended to read as follows:

Moneys in industrial insurance account in agency fund held in trust.

"Section 92-840. **Money in industrial** *insurance account in the agency* **fund held in trust.** The moneys coming into the industrial *insurance account in the agency* fund shall be held in trust for the purpose for which such *moneys were collected,* and if this act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Amending clause.

Section 169. Section 92-902, R. C. M. 1947, is amended to read as follows:

Employer electing Plan No. 1—proof of solvency.

"Section 92-902. **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

Assessment—annual payroll.

The board shall levy an assessment in the amount of not to exceed two hundreths of one per cent of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the board by said employer at the time of filing of proof of solvency.

Minimum $10.00.

No assessment shall be in an amount less than ten dollars ($10.00).

Estimated payroll.

If such employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

Deposit in state treasury.

The treasurer of the board shall pay the amounts so collected into the *state treasury.*"

Amending clause.

Section 170. Section 92-1005, R. C. M. 1947, in amended to read as follows:



HeinOnline -- 1963 vol. I 391 1963

Policy for insurance of compensation—approval by board.

"Section 92-1005. **Policies made subject to this act—assessment of insurers.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms shall have been approved by the board, and as otherwise provided by law.

Annual assessment—3¼% of premiums from employers under Plan No. 2.

On or before the first day of July of each year, the board shall assess and each insurer shall pay to the board not to exceed three and one-fourths per cent (3¼%) of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by the compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than ten dollars ($10.00). The treasurer of the board shall pay the amounts so collected into the *state treasury*. Payments by such insurers under this section shall be considered as items of loss for rate-making purposes."

Minimum.

Deposit in state treasury.

Item of loss—rate-making.

Amending clause.

Section 171. Section 92-1119, R. C. M. 1947, is amended to read as follows:

Physician paid $1.50 for each case out of earmarked revenue fund.

"Section 92-1119. **Payment of physician.** For a proper compliance with the provisions of the preceding section, the physician, after approval by the board, shall be paid out of the *board's administrative moneys in the earmarked revenue fund,* one and one-half dollars ($1.50) for each case."

Amending clause.

Section 172. Section 92-1334, R. C. M. 1947, is amended to read as follows:

Employers shall secure compensation to their employees.

"Section 92-1334. **Compensation plans.** Employers shall secure compensation to their employees under one of the following plans:

COMPENSATION PLAN NUMBER ONE

Plan No. 1.

1. **When and how employer may elect to adopt—direct payment to employee.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to dis-

Election.

Proof of solvency, financial ability.



HeinOnline -- 1963 vol. I 392 1963

charge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

Direct payment to employee.

2. **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars ($5.00) for the filing of every such proof of solvency.

Proof of solvency—filing.

Fee.

3. **Employer permitted to carry on business and settle directly with employee-renewal of application.** If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty (30) days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

Board shall grant permission.

Renewal.

4. **Additional proof of solvency—revocation of order.** The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten (10) or more than

Board may require additional proof of solvency.

Notice—revocation.



HeinOnline -- 1963 vol. I 393 1963

twenty (20) days, after and upon a full hearing, revoke any order or approval theretofore made.

Board may require security.

5. **Requiring security of employer.** If said industrial accident board shall find that such employer has no financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated per centum of said employer's last preceding annual payroll, or a certain per centum of the established amount of his annual payroll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, muncipal, or school district bonds, or the bonds or evidence of indebtednes of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

Deposit with treasurer of board— based on payroll.

Bond or undertaking.

Government and private bonds.

Deposit subject to approval, revision, change.

Return of security.

Treasurer liable to account.



HeinOnline -- 1963 vol. I 394 1963

Failure to pay compensation.

6. **Failure of employer to pay compensation—duty of board.** Upon failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such industrial accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficent thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate said securities.

Duty of board to apply deposits to payment.

Board deemed owner of deposits for purpose of liquidation.

Employer shall make deposit to guarantee payment within 30 days of accident.

7. **When employer to make deposit or security to guarantee payment of compensation.** Within thirty (30) days after the happening of an accident where death or the nature of the disability renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability, in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

Board may waive additional deposit.

Relief from liability.

8. **When employer may be relieved from liability.** Any employer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

Deposit of value of claim.

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which



HeinOnline -- 1963 vol. I 395 1963

such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

Purchase of annuity—approval.

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

Plan No. 2.

## COMPENSATION PLAN NUMBER TWO

Employer may insure liability.

1. **Employer electing plan No. 2 to insure his liability.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

Filing written acceptance—statement of information.

2. **Duty of employer electing plan No. 2—amount of insurance necessary.** Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and

Board shall determine amount of insurance.

Employer shall file policy with board.

Investigation.



HeinOnline -- 1963 vol. I 396 1963

necessary investigation, and the said employer shall furnish to such board all information which it may require.

Required provisions of policy.

3. **Policies to contain what.** All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, order, judgments, or decrees rendered against such insured. When any such policy, or the renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars ($3.00).

Filing policy or renewal—fee.

Policy must contain agreement of insurer to pay to compensation claimant.

4. **Agreement to be contained in policies of insurance —deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the disablement or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, in an amount not less than twenty thousand dollars ($20,000.00) or more than one hundred thousand dollars ($100,000.00) as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability in the manner hereinafter provided; and thereafter said insurer must make an additional deposit

Insurer must deposit security with board.

Limitation on amount.

Failure to pay—duty of board to pay from deposit.



HeinOnline -- 1963 vol. I 397 1963

to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

Policy deemed made subject to this act.

5. **Policies made subject to this act—form of insurance.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, as otherwise provided by law.

Renewal filed 30 days before expiration.

6. **Renewals.** Every renewal of such policy shall be made and delivered to said board at least thirty (30) days prior to the expiration of the expiring policy.

Insurer shall make deposit to guarantee payment within 30 days of accident.

7. **Deposits by insurer with board.** Within thirty (30) days of the happening of an accident where death or the nature of the disablement renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct; provided, that if the board deems the amount on deposit by said insurer under the provisions of paragraph 4 of plan two (2), in section 34 [this section], sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

Board may waive additional deposit.

Relief from liability.

8. **How insurer relieved from liability.** Any insurer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

Deposit of value of claim.

1. Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

Purchase of annuity—approval.

2. By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

30-days notice of cancellation to employer.

9. **Cancellation of insurance policy.** No policy of insurance issued under the provisions of compensation plan No. 2 shall be cancelled within the time limited for



HeinOnline -- 1963 vol. I 398 1963

its expiration except upon thirty (30) days' notice to the employer in favor of whom such policy is issued, and to the board unless such policy sought to be cancelled shall have been sooner replaced by other insurance.

Board may require reports of accidents.

10. **Report of insurance companies to board.** Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

Required clauses in policy.

11. **Policies to contain clause agreeing to do what—approval or change.** Every policy or contract insuring against liability for compensation under compensaiton plan No. 2. must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

Policy subject to approval, change, revision, by board.

Deposit held in trust by treasurer of board—change or renewal.

12. **Deposits under plan No. 2 as security.** Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

Return to depositor.

Earnings.

Treasurer liable to account.



HeinOnline -- 1963 vol. I 399 1963

Plan No. 3.

## COMPENSATION PLAN NUMBER THREE

Employer shall pay assessment into common account—occupational disease compensation account in agency fund.

1. It is the intent and purpose of compensation plan No. 3 that each employer subject to and bound by this plan shall be liable and pay for all disability to employees due to occupational diseases coming under the provision of this plan, and that all funds collected by assessments as herein provided shall be paid into one common *account* to be known as the accupational disease compensation *account in the agency* fund, which *account* shall be devoted exclusively to the payment of all valid claims for disability from occupational diseases arising out of or in the course of employment coming under the provisions of compensation plan No. 3. Such *account* shall consist of all assessments and penalties received and paid into the *account,* or property and securities acquired by and through the use of money belonging to the *account,* and interest earned upon money belonging to the *account,* together with any money appropriated by the legislature for the purpose of this act. The accounts of employers insured in such *account* shall be kept in such a manner as the board may prescribe for the purpose of providing information and statistics necessary for determining any changes in rates of classification of employment. The occupational disease compensation *account* shall be neither more nor less than self-supporting.

Employer under Plan No. 3 not liable to respond in damages.

2. Any employer, whether subject to and bound by this act or not, may elect to comply with the provisions of compensation plan No. 3. and pay into the occupational disease compensation *account* the premiums provided in this act, in which event such employer shall not be liable to respond in damages at common law or by statute for disability or death of an employee due to an occupational diseease during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such an employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn.

Employee deemed bound unless written rejection—effect.

Board shall divide into classes for rating.

3. All employments, occupations, or industries affected by the provisions of compensation plan No. 3 shall



HeinOnline -- 1963 vol. I 400 1963

be divided by the board for the purpose of the occupational disease compensation *account* into classes whose rates may be set and readjusted at such times as the board may determine. The board may rearrange the classes by withdrawing any employment embraced in one class and transferring it wholly or in part to another class. Separate counts shall be kept if [of] the amounts collected and expended in each class for determining rates, but for paying compensation and dividends the *account in the agency* fund shall be one and indivisible. The board shall determine the hazard of the different classes of occupations or industries, and fix the rates of assessment therefor at a percentage of the annual total payroll of such employer at the lowest rate consistent with the maintenance of a solvent occupational disease compensation *account,* and the creation of necessary surpluses and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk. The board, in fixing rates, shall provide for the expenses of administering the *account,* the disbursements on account of occupational disease to employees in each class, reserves adequate to meet anticipated and unexpected losses, reserves adequate to carry the class to maturity, and such other necessary reserves and surpluses as may be determined by the board. The board is authorized, in its discretion, to apply tentative rates, subject to modification in accordance with the loss experience of such risks.

Separate accounts.

Board shall fix rates.

4. The initial payment of assessments provided for herein by employers, whether presently engaged in a business, occupation or industry, subject to this act, or an employer who enters such business, occupation or industry at some future date, and all subsequent payment of assessments herein provided shall be made at such times and in such amounts as may be ordered and prescribed by the board.

Initial payment.

5. Any employer who is in default in the observance of any order of the board issued pursuant to the provisions of this act, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and such advance rate shall continue to be in force until such employer shall have ceased to be in such default.

Default—penalty.



HeinOnline -- 1963 vol. I 401 1963

Deficiency assessment.

6. If at the end of any year, it shall be seen that the contribution to the occupational disease compensation *account* by any class of industry shall be less than the drain upon such *account* on account of that class, the deficiency shall be made good to the *account* on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

Investment.

7. The treasurer of the board shall invest in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid such compensation and benefits as the board may direct; provided, however, that when there is sufficient money in the occupational disease compensation *account* to meet such compensation payments, any surplus or earnings remaining may be invested in the securities specified in this section.

Default— civil action.

8. If any employer shall default in any payment to the occupational disease *account*, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The board is hereby authorized, in its discretion, to cancel any employer's right to operate under compensation plan No. 3 for failure to pay the premiums due; provided, that when the board makes an order cancelling an employer's right for failure to pay premiums or assessments it shall be the duty of the board to make such order at least sixty (60) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties wherein the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices to the effect that the board has cancelled the right of the said employer to operate under the act, and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the occupational disease act.

Cancellation.

Order.

Notice to sheriff.

Posting.

Effect of cancellation.

Authority to compromise.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when



HeinOnline -- 1963 vol. I 402 1963

the board, in its discretion, finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

Liability under default.

9. For any disability to any employee resulting from an occupational disease occurring during default in any payment to the occupational disease compensation *account*, the defaulting employer as to such disability shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the occupational disease compensation *account* the amount of such default together with the penalty prescribed in subsection 5 of this section.

Option to sue or take under this act.

10. The person entitled to sue under the provisions of subsection 9 of this section shall have the option of proceeding by suit or taking under this act. If such persons take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the occupational disease compensation *account*. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

Assignment to state.

Waiver.

Board may prosecute or compromise.

11. Any cause of action assigned to the state under the provisions of subsection 10 of this section may be prosecuted or compromised by the board in its discretion.

Application for compensation.

Certificate of physician.

12. Where an employee is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician attending him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the employee; provided that the filing of a certificate of the attending physician shall not constitute a sworn claim for compensation.

Physician paid $5.00 for each case.

13. For proper compliance with the provisions of subsection 12 of this section, the physician, after approval by the board, shall be paid out of the occupational disease compensation *account*, five dollars ($5.00) for each case.

Application on death.

14. Where death results from an occupational disease, the parties entitled to compensation under compensation



HeinOnline -- 1963 vol. I 403 1963

Proof.

Certificate of physician.

plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the board.

Computation of payroll.

15. In computing the pay-roll of any employer the entire compensation received by any employee subject to this act shall be included, whether it be in the form of salary, wage, piecework, or otherwise and whether payable in money, board or otherwise.

Disbursement of occupational disease compensation account in agency fund—warrants.

16. Disbursements out of the occupational disease compensation *account in the agency* fund shall be made by the treasurer of the board, as the board may order. If at any time there shall not be sufficient money in the occupational disease compensation *account* with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum (6%) per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such *account* for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

Deposit of earnings.

Making of private profit felony—penalties.

Treasurer liable on official bond.

17. All earnings made by the occupational disease compensation *account* by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said *account*, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the occupational disease compensation *account* shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars ($5,000.00), or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.''



HeinOnline -- 1963 vol. I 404 1963

Amending clause.

Section 173. Section 92-1358, R. C. M. 1947, is amended to read as follows:

Employer's records subject to inspection.

"Section 92-1358. **Books, records and payrolls to be open to inspection.** The books, records, and payrolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of one hundred dollars ($100.00) for each offense, to be collected by civil action in the name of the state."

Refusal—penalty.

Civil action.

Amending clause.

Section 174. Section 92-120, R. C. M. 1947, is amended to read as follows:

Duty of attorney general.

"Section 92-120. **Attorney general legal adviser of board.** The attorney general shall be the legal adviser of the board, and shall represent it in all proceedings whenever so requested by the board or any member thereof.

Board may employ other counsel—pay out of industrial insurance acount.

And it is further provided that the board may, in the investigation and defense of cases under plan three of the workmen's compensation act, employ such other attorney or legal adviser, as it deems necessary, and pay for the same out of the industrial *insurance account in the agency* fund."

Amending clause.

Section 175. Section 92-1101, R. C. M. 1947, is amended to read as follows:

Employer under Plan No. 3 shall pay percentage of payroll.

"Section 92-1101. **What necessary in electing plan No. 3—percentage of payroll to be paid under plan.**

COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall, in the manner herein specified pay *to the industrial accident board* a premium based on a percentage of his payroll as determined by the industrial accident board in accordance with the provisions of this act."



HeinOnline -- 1963 vol. I 405 1963

Amending clause.

Section 176. Section 92-1105, R. C. M. 1947, is amended to read as follows:

Liability to pay for injuries to employees.

"Section 92-1105. **Intent and purpose of plan No. 3.** It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of said plan shall be liable to pay for injuries happening to employees coming under the provisions of the workmen's compensation act.

Deposit in industrial insurance account in agency fund.

All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money *shall be deposited in the industrial insurance account in the agency fund.*

Board shall divide into classes for rating.

The industrial insurance *program* shall be neither more nor less than self supporting. Employments affected by the provisions hereof shall be divided by the board into classes, whose rates may be readjusted at such times as the board may determine.

Separate accounts.

Separate accounts shall be kept of the amounts collected and expended in each class for determining rates but for payment of compensation and dividends the *industrial insurance account* shall be one and indivisible. The board shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of a solvent industrial insurance fund, and the creation of surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk.

Board shall fix rates.

The board in fixing rates shall provide for the expenses of administering the *industrial insurance account* allowed by law, the disbursements on account of injuries and deaths of employees in each class, an adequate catastrophe reserve, reserves adequate to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the board."

Amending clause.

Section 177. Section 92-1102, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 406 1963

"Section 92-1102. **Permitting employers in certain nonhazardous occupations to elect to comply and come under the provisions of plans 2 and 3 of this act—classification of such employers and their employees.** Any employer engaged in farming, dairying, agriculture, viticulture, horticulture, stock or poultry raising, may elect to comply with the provisions of plan 2 or 3 of this act and pay the premiums provided in the act, in which event he shall not be liable to respond in damages at common law or by statute for injury or death of any employee during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn. Such employer shall be classified under the provisions of section 92-1104 as to rate of assessments, which assessment shall be paid in the manner and at the times specified under plan 2 or 3 of the workmen's compensation act."

Employers under certain nonhazardous occupations may elect to come under act—not liable to respond in damages.

Employee deemed bound unless written rejection—effect.

Rate of assessment.

Section 178. Section 92-1103, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 92-1103. **Contract or policy of insurance — payment of premium.** Every employer electing to be bound by compensation plan No. 3. shall receive from the industrial accident board a contract or policy of insurance in a form approved by the board. The premium thereon shall be paid by the employer, to the industrial accident board at such times as the board shall prescribe and shall be paid over by the board to the state treasurer to the credit of the industrial insurance *account in the agency* fund."

Board shall issue policy to employer under Plan No. 3—payment of premium.

Deposit in industrial insurance account in agency fund.

Section 179. Section 92-1106, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 92-1106. **Initial payment July 15, 1915.** There shall be collected from all classes as initial payment into the industrial *insurance account in the agency* fund, on or before the fifteenth day of July, 1915, one-fourth of the premium assessment for that fiscal year,

Initial payment—insurance account.



HeinOnline -- 1963 vol. I 407 1963

and one-twelfth thereof at the first of each month beginning with October 1, 1915; provided, that if such *account* shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet *its* requirements, *insurance account in the agency fund* no assessment shall be called for such month."

Amending clause.

Section 180. Section 92-1110, R. C. M. 1947, is amended to read as follows:

Surplus—board may declare dividend.

"Section 92-1110. **Surplus in industrial insurance** *account.* If at the end of any fiscal year, there exists in the industrial insurance *account in the agency* fund an excess of assets over liabilities, and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the board may declare a dividend in such manner as the rules of the board may prescribe, to those employers who have paid premiums into the industrial insurance *account in the agency* fund in excess of liabilities chargeable to them in the *account in the agency* fund for that year. In determining the amount or proportion of such balance to which employer is entitled as dividends, the board shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Amending clause.

Section 181. Section 92-1114, R. C. M. 1947, is amended to read as follows:

Default—civil action.

"Section 92-1114. **Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.** If any employer under plan No. 3 shall default in any payment to the industrial *accident board,* the sum due may be collected by an action at law in the name of the state and such right of action

Cancellation.

shall be cumulative. The industrial accident board is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the workmen's compensation act for failure to pay the premiums due; pro-

Order.

vided that when the industrial accident board makes an order cancelling an employer's right for failure to pay premiums it shall be the duty of the industrial acident board to make such order at least thirty (30) days before the cancellation becomes effective and to send a

Notice to sheriff.

formal notice to the sheriff or sheriffs of the county or counties where the employer is operating, and it shall be



HeinOnline -- 1963 vol. I 408 1963

the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices, to the effect that the industrial accident board has cancelled the right of the said employer to operate under the act; and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the workmen's compensation act. Posting. Effect of cancellation.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion find that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due." Authority to compromise.

Section 182. Section 92-1115, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 92-1115. **Injury happening while employer is in default.** For any injury happening to any of his workmen during default in any payment to the industrial accident *board,* the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the industrial accident *board* the amount of such default, together with the penalty prescribed by section 92-1108." Liability under default.

Section 183. Section 92-1116, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 92-1116. **Assignment of cause of action to state.** The person entitled to sue under the provisions of the preceding section shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the industrial *insurance account in the agency* fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act." Option to sue or take under act. Assignment to state. Waiver.

Section 184. Section 92-1122, R. C. M. 1947, is amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. I 409 1963

Disbursement out of industrial insurance account in agency fund—warrants.

"Section 92-1122. **Disbursements out of industrial accident** *account*—**employer to pay warrant.** Disbursements out of the industrial *insurance account in the agency* fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the *account* with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such *account* he shall be credited with the amount so paid, with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such *account* for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments."

Section 185. Section 92-1123, R. C. M. 1947, is amended to read as follows:

Deposit of earnings.

"Section 92-1123. **Earnings and interest on deposits—treasurer to make no profit.** All earnings made by the industrial *insurance account in the agency* fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said *account*,

Making of private profit—felony—penalties.

and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the *account* shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, ($5,000.00) or both such fine and

Treasurer liable on official bond.

imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the *account*."

Amending clause.

Section 186. Section 92-1112, R. C. M. 1947, is amended to read as follows:

Investment of reserve and surplus.

"Section 92-1112. **Investment of reserve—payment of installments.** The treasurer of the board shall turn over such reserve to the state board of land commissioners to be invested and the same shall be invested by said state board of land commissioners as part of the long term investment fund and out of the same and its earn-



HeinOnline -- 1963 vol. I 410 1963

ings shall be paid the monthly installments, and any lump sum, then or thereafter arranged for; provided, however, that when there is sufficient money in the industrial *insurance account in the agency* fund to meet such compensation payments, any surplus remaining may be invested as specified in this section."

Amending clause.

Section 187. Section 92-1113, R. C. M. 1947, is amended to read as follows:

Duty of treasurer to keep acounts.

"Section 92-1113. **Treasurer to keep accounts of segregations.** The treasurer of the board shall keep an accurate account of all such segregations of the industrial *insurance account in the agency* fund, and upon direction of the board shall divert from the *account* any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Amending clause.

Section 188. Section 92-1302, R. C. M. 1947, is amended to read as follows:

Administration—industrial accident board—travel expenses.

"Section 92-1302. **Administration of act.** This act shall be administered by the industrial accident board of the state of Montana. The members of the industrial accident board shall receive no additional compensation for administering this act. The actual and necessary traveling expenses of the members of the board while on business of administering this act shall be paid from the occupational disease compensation *account in the agency* fund."

Amending clause.

Section 189. Section 92-1343, R. C. M. 1947, is amended to read as follows:

Duty of attorney general.

"Section 92-1343. **Legal action by board.** Upon request of the board, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this act or for the recovery of money due the state occupational disease compensation *account in the agency* fund or for any penalty provided for in this act, and he shall prosecute or defend all actions brought by or against the board, or the members thereof in their official capacity. The board may compromise any action brought under this act."

Amending clause.

Section 190. Section 92-1357, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 411 1963

Apportionment, payment—costs and disbursements.

"Section 92-1357. **Apportionment of costs and disbursements—expenses.** The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parities on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan No. 3, may be paid from the occupational disease compensation *account in the agency* fund, and in the discretion of the industrial accident board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or officers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the state of Montana."

Amending clause.

Section 191. Section 11-2030, R. C. M. 1947, is amended to read as follows:

Fire insurance premium tax—deposit in earmarked revenue fund—use.

"Section 11-2030. **Fire insurance premium tax to be paid into fund.** The state auditor and ex-officio commissioner of insurance of the state of Montana shall annually deposit in the *earmarked revenue fund,* such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. *Such moneys shall be used for the payment of claims and administrative costs as provided in section 11-2025 and 11-2026.*"

Amending clause.

Section 192. Section 11-2025, R. C. M. 1947, is amended to read as follows:

Board shall pay medical claims.

"Section 11-2025. **Payment of claim.** Upon the receipt of a claim by the industrial accident board, if the same is found to be in compliance with the provisions of section 11-2024, the board must order the allowance thereof, and pay the same to the order of the attending physician or surgeon, attending nurse, and hospital."

Amending clause.

Section 193. Section 11-2026, R. C. M. 1947, is amended to read as follows:

Industrial accident board shall administer act.

"Section 11-2026. **Administration of act.** The industrial accident board of the state of Montana shall adminis-



HeinOnline -- 1963 vol. I 412 1963

ter this act, and all payments made hereunder shall be made by warrants drawn by the board."

Amending clause.

Section 194. Section 11-2028, R. C. M. 1947, is amended to read as follows:

Earnings.

"Section 11-2028. **Earnings to be part of** *moneys.* All earnings made by *moneys earmarked by section 11-2030* by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys."

Amending clause.

Section 195. Section 92-709A, R. C. M. 1947, is amended to read as follows:

Liability—second injury.

"Section 92-709A. **Permanent and total disability created by a second injury—second injury** *account.* (1) If an employee who has previously lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, from any cause or origin and irrespective of compensability becomes permanently and totally disabled through the loss, or loss of use, of another such member or organ, the employer, insurance carrier, or industrial *insurance account in the agency* fund, as the case may be, shall be liable only for the compensation payable for such second loss; provided, that in addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total disability, out of *moneys in the agency fund* for such purpose in the following manner:

Payment on death where no beneficiary—deposit in second injury account.

In every case of the death of an employee under this act, where there is no person entitled to compensation, the employer if under Plan I, or his insurance carrier if under Plan II, or the industrial *insurance account in the agency* fund if under Plan III, shall pay to the second injury *account* of the industrial accident board the sum of five hundred and no/100 ($500.00) dollars to be deposited for the benefit of said *account in the agency* fund, and the board shall direct the distribution thereof.

Surplus—board may suspend or decrease assessment for one year.

When in the judgment of the industrial accident board, the amount of money in the second injury *account* is such that there is a surplus above and beyond known liabilities, the board may in its discretion suspend or decrease further collection of essessments for a period of



HeinOnline -- 1963 vol. I 413 1963

time to be determined by the board but in no event to exceed one (1) calendar year.

Board may direct transfer from second injury account—interest.

(2) When in the judgment of the industrial accident board, the contributions to the second injury *account* so warrant, the board shall direct the reimbursement of the industrial *insurance account in the agency* fund out of said second injury *account.* In addition to the reimbursement hereinabove directed to be made, the board shall cause to be paid to the industrial *insurance account in the agency* fund from said second injury *account,* when contributions thereto so warrant, interest at the rate of 3% per annum said sum of twenty thousand dollars ($20,000.00) hereinabove appropriated or upon such portion thereof as may from time to time remain in said second injury *account.*"

Amending clause.

Section 196. Section 75-2708, R. C. M. 1947, is amended to read as follows:

Retirement board trustees of moneys.

Investment.

"Section 75-2708. **Management of** *moneys.* (1) The retirement board shall be the trustees of the *moneys collected under* this act and the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund.

Board shall allow interest.

(2) The retirement board annually shall allow regular interest on the average amount for the preceding year *on such moneys* with the exception of *moneys used for administrative* expense. The amount so allowed shall be annually credited *to such moneys* by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the *moneys* of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

Payment on claims—required signatures.

(3) The state treasurer *is* the custodian of the *moneys collected under this act* and of the securities in which said *moneys* are invested. All payments *of such moneys* shall be



HeinOnline -- 1963 vol. I 414 1963

made only upon *claims* signed by two (2) persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such person shall be filed with the *state controller* as his authority for *approving* such *claims.*

Copy filed with state controller.

(4) Except as herein provided no member of the retirement board and no employee of the board shall have an interest, direct or indirect in the gains or profits of any investment of funds as provided herein, nor as a member of the board directly or indirectly, receive any pay or emolument for his services. No member of the said board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the retirement board; nor shall any member or employee of the board become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement board.

Private use of moneys forbidden.

(5) The board may in its discretion transfer the savings account of a member to the pension accumulation *moneys* if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership."

Board may transfer savings account to pension accumulation moneys.

*(6) All of the funds referred to in section 75-2709 except the expense fund shall be replaced by one or more accounts in the agency fund. The expense fund shall be replaced by an account in the earmarked revenue fund.*

Funds replaced by accounts.

Section 197. Section 68-405, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 68-405. **Fund** *abolished. The* 'public employees' retirement fund' *is hereby abolished.* All contributions paid into *the retirement system* as the employer agency portion from the state, counties, cities, towns, school districts or other public agencies or political subdivisions shall constitute a pooled or mingled *account in the agency* fund for payment of all claims made and approved." *Whenever the words 'retirement fund' appear in this act they*

"Public employees' retirement fund" abolished— replaced by public employees' retirement account in agency fund.



HeinOnline -- 1963 vol. I 415 1963

*shall be taken to mean the public employees' retirement account in the agency fund.*

Amending clause

Section 198. Section 59-1103.1, R. C. M. 1947, is amended to read as follows:

Contributions—state employees.

"Section 59-1103.1. **Contributions by state employees.**

(a) Every employee of the state whose services are covered by an agreement entered into under section 59-1103 shall be required to pay for the period of such coverage, contributions, with respect to wages (as defined in section 59-1102), equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

Deduction from wages.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

Adjustment.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe."

Amending clause.

Section 199. Section 59-1104, R. C. M. 1947, is amended to read as follows:

Plans for coverage—employees—political subdivisions—submission.

"Section 59-1104. **Plans for coverage of employees of political subdivisions.** (a) Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

Approval.



HeinOnline -- 1963 vol. I 416 1963

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under section 59-1103; Conformity.

(2) it provides that all services which constitute employment as defined in section 59-1102 and are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218 (c) (3) (C) of the Social Security Act is applicable; Services.

(3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose; Source of funds.

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan; Method of administration.

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports: Reports.

(6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act. Termination.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby. Notice and hearing.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay Time for payment—contributions.



HeinOnline -- 1963 vol. I 417 1963

with respect to wages (as defined in section 59-1102), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 59-1102.1.

Contributions.

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contributions from his wages as and when paid. Contributions so collected shall *partially* discharge the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

Partial discharge.

Delinquencies, civil action.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor, or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department, agency or fund of the state."

Deduction.

Amending clause.

Section 200. Section 59-1105, R. C. M. 1947, is amended to read as follows:

Contribution account in agency fund.

"Section 59-1105. **Contribution** *account.* (a) There is hereby established, *in place of the* fund known as the contribution fund, *a contribution account in the agency fund.* Such *account* shall consist of and there shall be deposited in such *account:* (1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104; (2) all moneys appropriated thereto by the legislative assembly of the state of Montana; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the *account*; (4) interest



HeinOnline -- 1963 vol. I 418 1963

earned upon any moneys in the *account;* and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the *account* and all other moneys received for the *account* from any other source. All moneys in the *account* shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the *account,* including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

Use—withdrawals.

(b) The contribution *account* shall be used and administered exclusively for the purpose of this act. Withdrawals from such *account* shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

Custodian of contribution account shall pay as directed.

(c) From the contribution *account* the custodian of the *account* shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

Payment of warrants.

(d) The treasurer of the state shall pay all warrants drawn upon *the state agency* in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

Estimate included in budget.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution *account.*"

Amending clause.

Section 201. Section 31-201, R. C. M. 1947, is amended to read as follows:

Definitions.

"Section 31-201. **Definitions.** The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:



HeinOnline -- 1963 vol. I 419 1963

"Accumulated deductions." 'Accumulated deductions', the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary." 'Beneficiary', shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman." 'Retired patrolman', any person in receipt of a retirement allowance under this act.

"Board." 'Board', the Montana highway patrolmen's retirement board.

"Compulsory retirement age." 'Compulsory retirement age', sixty years of age.

"Contributor." 'Contributor', any person who has accumulated deductions in the fund, standing to his credit.

"Final salary." 'Final salary', the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent." 'Actuarial equivalent', the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account." *'Account'*, the Montana highway patrolmen's retirement *account in the agency* fund.

"Involuntary retirement." 'Involuntary retirement', a retirement not for cause and before retirement age.

"Member's annuity." 'Member's annuity', payments for life derived from contributions made by the contributor.

"Optional retirement age." 'Optional retirement age', the age at which a contributor may retire after twenty (20) years' service or more.



HeinOnline -- 1963 vol. I 420 1963

'Retirement age', the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol. "Retirement age."

'Retirement allowance', the state annuity plus the member's annuity. "Retirement allowance."

'State annuity', payments for life derived from contributions made by the state of Montana.'' "State annuity."

Section 202. Section 31-205, R. C. M. 1947, is amended to read as follows: Amending clause.

''Section 31-205. **Payments into the Montana highway patrolmen's retirement** *account*—**investment.** All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement *account in the agency* fund. Whenever there is on deposit in the Montana highway patrolmen's retirement *account* a sum in excess of twenty-five thousand dollars ($25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the *account* less than twenty-five thousand dollars ($25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.'' Deposit in Montana highway patrolmen's retirement account in agency fund. Investment.

Section 203. Section 31-206, R. C. M. 1947, is amended to read as follows: Amending clause.

''Section 31-206. **Rules and regulations — actuarial data.** The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the *account,* and shall adopt for the retirement system one or more mortality tables." Authority of board to administer. Actuarial data.



HeinOnline -- 1963 vol. I 421 1963

Amending clause.

Section 204. Section 31-209, R. C. M. 1947, is amended to read as follows:

Contributions by members.

"Section 31-209. **Payments by contributors.** Every member shall be required to contribute into the *account* a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and *deposited* to his *credit* in the *account,* provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the *account* shall cease."

Amending clause.

Section 205. Section 31-210, R. C. M. 1947, is amended to read as follows:

Contributions by state.

"Section 31-210. **Contributions by the state of Montana.** The state of Montana shall annually contribute to the *account* fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana."

Amending clause.

Section 206. Section 87-111, R. C. M. 1947, is amended to read as follows:

Unemployment compensation account—agency fund.

"Section 87-111. **Unemployment compensation** *account.* **Establishment and control.** There is hereby established separate and apart from all public moneys or funds of this state, an *account in the agency fund known as the* unemployment compensation *account,* which shall be administered by the commission exclusively for the purposes of this act. *Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund.* This *account* shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109, (c) (4); (2) interest earned upon any moneys in the *account;* (3) any property or securities acquired through the use of moneys belonging to the *account*; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended. All moneys in the *account* shall be mingled and undivided."

Moneys in account.

Amending clause.

Section 207. Section 87-112, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 422 1963

"Section 87-112. **Accounts and deposits.** The state treasurer shall be ex officio the treasurer and custodian of the *unemployment compensation account and* shall administer such *account* in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the *account* three (3) separate accounts; (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the *unemployment compensation account,* upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to sections 87-135, to 87-139 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other money in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the *unemployment compensation account.* The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the *unemployment compensation account* in an amount fixed by the commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the *unemployment compensation* administration *account.*"

State treasurer ex-officio treasurer and custodian.

Three separate accounts.

Deposit in clearing account.

Refunds.

Deposit in treasury of U.S.—unemployment trust fund.

Moneys in benefit account.

Deposit in bank or public depository.

Separate bond of treasurer.

Section 208. Section 87-133, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 87-133. **Unemployment compensation admin-**



HeinOnline -- 1963 vol. I 423 1963

Unemployment compensation administration account in federal and private revenue fund.

Costs of administration.

**istration** *account.* There is hereby created *an account in the federal and private revenue* fund to be known as the unemployment compensation administration *account.* All moneys which are deposited, appropriated or paid into this *account* are hereby appropriated and made available to the commission. All moneys in the *account* shall be expended solely for the purpose of defraying the costs of administration of this act and costs of administration of such other legislation as shall be specifically delegated to the commission for administration by the legislature.

Use of federal moneys.

All moneys received and deposited in said *account* for administration expense from the United States of America or any agency thereof, pursuant to section 302, title III of the social security act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act.

Moneys in account.

The *account* shall consist of (1) all moneys received from the United States of America or any agency thereof, pursuant to section 302, title III of the social security act, as amended, and (2) all moneys appropriated by the state from the general fund for the purpose of administering this act, all interest and penalties collected on past due contributions as provided by section 87-135; all moneys, trust funds, supplies, facilities or services furnished, deposited, paid and received from the United States of America, or any agency thereof, from this state or any agency thereof, from any other state or any of its agencies, from political subdivisions of the state, or any other source for administrative expense and purpose.

Limitation.

Notwithstanding any provisions of this section, all money requisitioned and deposited in this *account* pursuant to section 87-113 shall remain part of the unemployment compensation *account* and shall be used only in accordance with the conditions specified in section 87-113. All moneys in this *account* shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other *accounts.*

Balance shall not lapse.

Any balance in this *account* shall not lapse at any time, but shall be continuously available to the commission for the expenditure consistent with this act.

Separate bond of state treasurer.

The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration *account* in an amount



HeinOnline -- 1963 vol. I 424 1963

to be fixed by the commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment compensation *account* under section 87-112, shall be paid from the moneys in the unemployment compensation administration *account." Any reference to the unemployment compensation administration fund in this code shall be taken to mean the unemployment compensation administration account in the federal and private revenue fund.*

Reference.

Section 209. Section 84-5621, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 84-5621. **Clerical and field assistance.** The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606 of the Montana Revised Codes, of 1947, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a *subfund in the sinking fund* and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

Board may employ clerical and field assistants.

Deposit in general fund.

Deposit in subfund in sinking fund—use.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a *subfund in the sinking fund,* which shall, while any of the bonds hereafter issued and sold, in addition to the twenty-two million dollars ($22,000,000.00) authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act."



HeinOnline -- 1963 vol. I 425 1963

War veterans' compensation fund abolished—moneys transferred to subfund in bond proceeds and insurance clearance fund.

*The War Veterans' Compensation Fund established by Initiative No. 54, as amended by Chapter 44, Laws of 1957 is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two accounts in the sinking fund established by this section.*

Amending clause.

Section 210. Section 71-901, R. C. M. 1947, is amended to read as follows:

Treasurer shall receive federal funds.

Public welfare moneys—deposit in treasury to credit of state department of public welfare.

"Section 71-901. **Receipt of funds.** The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the Public Welfare Act shall be paid into the state treasury *to the credit of the state department of public welfare.*"

Amending clause.

Section 211. Section 4-229, R. C. M. 1947, is amended to read as follows:

Moneys from sale of liquor—deposit in revolving fund to credit of board—use.

Transfer to earmarked revenue fund.

Payment of board obligations.

Deposit in general fund.

"Section 4-229. **Disposition of money received.** All moneys received from the sale of liquor at the state liquor stores shall be *deposited in the revolving fund in the state treasury to the credit of the board. T*he board is hereby authorized to *purchase liquor from moneys deposited to its account in the revolving fund. The board shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. N*o obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores. The board shall pay into the state treasury *to the credit of the general fund* the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores."

Amending clause.

Section 212. Section 32-1619, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 426 1963

"Section 32-1619. *Disposition of* **state highway** *moneys.* All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other *state* sources *shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund.* All moneys received from the counties, and from the federal government or other agencies *shall be deposited in the federal and private revenue fund to the credit of the state highway commission.* Hereafter all moneys collected for the state highway *commission* as authorized by law shall be credited to such fund or funds by the state treasurer."

State highway moneys—deposit in earmarked revenue fund—state highway account.

Deposit in federal and private revenue fund.

Section 213. Section 84-1840, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 84-1840. **Disposition of funds.** All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same *in the earmarked revenue fund* to the credit of the state highway *department.*"

Taxes, interest, penalties—deposit in earmarked revenue fund.

Section 214. Section 84-1802, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 84-1802. **Dealers' statements — amount of tax—aviation gasoline tax exemption certificates.** (1) Each dealer shall, not later than the twenty-fifth (25) day of each calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed and sworn to, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of a license tax, in an amount equal to the lawful tax per gallon imposed by section 10, of chapter 39, of the Laws of the Twenty-ninth Legislative Assembly of the state of Montana of 1945, and acts amendatory, or such other lawful tax as may be imposed by law for each gallon of gasoline so handled, and upon which such license tax was not paid by any other dealer in this state, for engaging in and carrying on such busi-

Dealers monthly statement of gasoline

License tax.



HeinOnline -- 1963 vol. I 427 1963

2% loss deduction.

Aviation gasoline.

ness in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. In addition, a dealer may deduct for each gallon of aviation gasoline sold by him and for which be submits a valid aviation gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state *aeronautics commission* by section 1-501.

Any dealer engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one statement.

Permit to issue aviation gasoline tax exemption certificates.

(2) Any dealer at an established airport, who purchases aviation gasoline for resale directly to consumers using such gasoline in aircraft, or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed $5.00 for each permit issued and may provide that said permits shall be valid for a period of not exceeding five years. No permit shall be transferrable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

Fee.

Revocation.

Holder may purchase aviation gasoline without tax.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state *aeronautics commission* upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a dealer



HeinOnline -- 1963 vol. I 428 1963

other than at an established airport and the purchase is 50 gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any dealer who sells aviation gasoline either directly to the holder of such permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state *aeronautics commission;* but notwithstanding any other provision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any dealer to the deduction authorized in subsection (1) of this section unless submitted to the board prior to the end of the second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued."

Time limitation—submission of certificate.

Section 215. Section 28-111, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 28-111. **Determination of costs of fire protection—certification—tax levy.** The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

Fire protection plan—costs apportioned.

Appropriation.

Assessment.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from

Delinquent owners.



HeinOnline -- 1963 vol. I 429 1963

each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

Secretary shall certify names to county assessor.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Assessments.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in *the agency fund to the credit of the state forester.*"

Deposit in agency fund for state forester.

Amending clause.

Section 216. Section 81-1410, R. C. M. 1947, is amended to read as follows:

State treasurer shall receive moneys.

"Section 81-1410. *Authority to receive moneys.* The state treasurer is hereby authorized to receive moneys that may be appropriated or allotted for the purposes named in section 81-1409, by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual."

Amending clause.

Section 217. Section 28-123, R. C. M. 1947, is amended to read as follows:

Disposal of moneys by board for fire prevention.

"Section 28-123. **Disposal of moneys.** The following funds may be expended as directed by the board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other co-operative funds collected,



HeinOnline -- 1963 vol. I 430 1963

appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated."

Amending clause.

Section 218. Section 28-124, R. C. M. 1947, is amended to read as follows:

Disbursement of co-operative moneys.

"Section 28-124. **Disbursement of moneys.** All co-operative moneys collected *under the authority of section 28-111 and* appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be *transferred to the earmarked revenue fund. Such moneys may then be* paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof."

Transfer to earmarked revenue fund.

Amending clause.

Section 219. Section 81-1601, R. C. M. 1947, is amended to read as follows:

State board of land commissioners—authority to sell timber.

"Section 81-1601. **Sale of timber**—*fees for brush disposal and timber stand improvement.* The state board of land commissioners shall have the power to sell timber on state lands, at such price per thousand feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars ($3.00) per thousand feet for white pine, yellow pine and spruce and at a less price than one dollar and a half ($1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the state board of land commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale shall

Minimum price.

Preservation.



HeinOnline -- 1963 vol. I 431 1963

Estimation and appraisal.

be granted, the timber shall be estimated and appraised under the direction of the state forester, upon the request and subject to the approval of the state board of land commissioners, which estimates and appraisals shall show as nearly as may be the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed."

Fees—deposit in earmarked revenue fund for state forester.

*The state board of land commissioners may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the state forester.*

Amending clause.

Section 220. Section 1-501, R. C. M. 1947, is amended to read as follows:

Receipt and disbursement of moneys—state aeronautics commission.

"Section 1-501. *Receipt and disbursement of moneys.* All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 1-203, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes of this act, shall be paid out of the following revenues to-wit: All gifts and all legislative appropriations *to the commission;* all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state.

Deposit in state treasury.

*All such moneys shall be deposited in the state treasury to the credit of the commission.*

Deposit in earmarked revenue fund—one-cent tax—aviation gasoline.

There shall be *deposited in the earmarked revenue fund to the credit of the commission* the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax now or hereafter imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

No refund.

No part of said one cent (1¢) per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the



HeinOnline -- 1963 vol. I 432 1963

amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818."

Amending clause.

Section 221. Section 84-1819, R. C. M. 1947, is amended to read as follows:

False statements, unlawful use—penalties.

"Section 84-1819. **Penalty for false statements, unlawfully obtaining refunds, or unlawful use of aviation gasoline tax exemption certificates.** Any person

(a) who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him, or to any other person, any such refund without being entitled to the same under the provisions of this act, or

(b) who shall make any false statement in any application for a permit to issue aviation gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any aviation gasoline for which such a certificate has been issued otherwise than in aircraft or who shall collect that part of the tax, not allocated to the state *aeronautics commission,* in connection with a sale covered by a valid certificate shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment."

Amending clause.

Section 222. Section 5-910, R. C. M. 1947, is amended to read as follows:

State examiner may make special examinations.

"Section 5-910. **Special examinations and fees.** Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examinations shall be charged for at the rate of sixty ($60.00) a day for each person engaged in the examination. All special exam-

Fees.



HeinOnline -- 1963 vol. I 433 1963

Deposit in earmarked revenue fund—exception—state agencies.

ination fees or charges so collected by the state examiner and ex officio superintendent of banks and paid to the state treasurer, *except those collected from state agencies,* shall be placed in *the earmarked revenue* fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining at the end of each current year shall be transferred by the state treasurer to the general fund.

Transfer to general fund.

Fees—examination of state agencies.

*The state examiner may also charge sixty dollars ($60.00) a day for examining state agencies that spend moneys from funds other than the general fund, trust and legacy fund or agency fund. The charge shall be in proportion to the amount of such moneys spent to the total annual expenditures of the agency. All fees collected from state agencies shall be deposited in the revolving fund to the credit of the state examiner. All moneys remaining at the end of each current year shall be transferred to the general fund.*

Deposit in revolving fund.

Transfer to general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees *enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909* must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination."

Amending clause.

Section 223. Section 75-3701, R. C. M. 1947, is amended to read as follows:

Principal of public school fund—subfund in trust and legacy fund.

Sources.

"Section 75-3701. *Public* **school fund.** The principal of the *public* school fund *shall be carried by the state treasurer as a subfund in the trust and legacy fund and* shall remain irreducible and permanent. That said fund shall be derived from the following sources, to wit:
Appropriations and donations by the state; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific



HeinOnline -- 1963 vol. I 434 1963

purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum (5%) of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 15 of the Enabling Act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools, and such other funds as may be provided by the legislative enactment."

Section 224. Section 81-1001, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 81-1001. **Investment of permanent funds.** All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, and all permanent funds subject to the administration of the board under article XXI of the state constitution, *shall be carried by the state treasurer as subfunds in the trust and legacy fund, and* shall be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; all of such investments to be subject to the regulations and limitations of this act." Investment—permanent funds.

Section 225. Section 81-1005, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 81-1005. **Investment of income** *moneys.* *P*ublic school *interest and income moneys* and other income for which there is no immediate demand, may be invested in state general fund warrants and in county warrants upon the general fund, the poor fund, the road fund, or school district warrants, subject to the limitations Investment—interest and income moneys.



HeinOnline -- 1963 vol. I 435 1963

prescribed in the preceding section; provided, however, that they shall not be invested in such warrants, unless such warrants will be payable at such time as to make the income available when the funds are to be paid out for the purposes for which they are intended."

Amending clause.

Section 226. Section 75-1315, R. C. M. 1947, is amended to read as follows:

Duty to apportion school interest and income moneys among counties.

"Section 75-1315. **Apportionment of school** *interest and income moneys.* He shall, between the first and tenth day of February of each year, apportion the state school *interest and income moneys* among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to *order a warrant drawn* on or before the tenth day of January of each year *in* the amount of the state school *interest and income moneys* subject to apportionment. The state treasurer shall certify such apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 84-4401, in which case the county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from state school *interest and income moneys,* may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county, the amount apportioned to that county."

Certification.

Amending clause.

Section 227. Section 19-121, R. C. M. 1947, is amended to read as follows:

Montana fine arts commission moneys—deposit in federal and private revenue fund.

"Section 19-121. **Montana fine arts' commission** *moneys. Moneys* collected for the above purposes *shall be deposited in the federal and private revenue fund in the state treasury and* may be expended only for the purposes enumerated in such paragraphs 1 to 6 inclusive in section 19-120 as amended herein, by the commission."

Amending clause.

Section 228. Section 53-122, R. C. M. 1947, is amended to read as follows:

Motor vehicles—registration fees.

"Section 53-122. **Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers'**



HeinOnline -- 1963 vol. I 436 1963

**registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semi-trailers and tractors providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicles, in *the* motor vehicle recording *account* for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.** Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semi-trailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars ($30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars ($5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars ($2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars ($15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2,850) pounds, or under, other than motor trucks, five dollars ($5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2,850) pounds, other than motor trucks, ten dollars ($10.00);

Electrically driven passenger vehicles, ten dollars ($10.00);

All motorcycles, two dollars ($2.00);

Tractors and/or trucks, ten dollars ($10.00);

Busses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars ($2.00);



HeinOnline -- 1963 vol. I 437 1963

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars ($5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars ($10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars ($15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires;

Bicycles with motor attachments, one dollar ($1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

Use of funds in county motor vehicle license fund.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

City road fund.

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a



HeinOnline -- 1963 vol. I 438 1963

population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles, shall be held by the county treasurer and segregated from other county roads funds and designated as 'city road fund', to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

Paid to city treasurer.

(b) The license fees held in the city road fund, as hereinbefore provided, at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the 'city road fund', shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than seven hundred and fifty (750) square miles, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

Supervision of construction.

Public highways.

(c) The net license fees derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of the county from which the registration fee came, such fees, excepting apportionment to the city road fund, to be used by said county for the construction,



HeinOnline -- 1963 vol. I 439 1963

repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county, including city streets forming component parts of arterial highways within the corporate cities of less population than thirty-five thousand (35,000), according to the federal census of 1930, within the boundaries of said county, other than any corporate city entitled to receive or expend the 'city road fund', within the boundaries of said county.

½-year license.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half (½) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

Transfer of certificate of registration.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar ($1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

Fee.

Exception—government vehicles

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.



HeinOnline -- 1963 vol. I 440 1963

Deposit in motor vehicle recording account in earmarked revenue fund.

All fees, other than license fees, mentioned and described in sections 53-110 and 53-112, and in section 53-135, shall hereafter be deposited in, and paid into, the *earmarked revenue fund and* shall be *used to pay* all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles. *Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.*

Distribution of surplus to counties.

Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording *account* more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Amending clause.

Section 229. Section 94-35-152.13, R. C. M. 1947, is amended to read as follows:

Industries receipts—state institutions—deposit in earmarked revenue fund.

"Section 94-35-152.13. *Disposition of industries receipts.* All receipts from the sale of the products produced or manufactured by the industries in the penal or reformatory institutions of the state shall be deposited in the state treasury to the credit of *the earmarked revenue fund and* shall be available for capital outlay for industrial purposes or maintenance, operation and recurrent expenses of the industries above described."

Amending clause.

Section 230. Section 80-720, R. C. M. 1947, is amended to read as follows:

Employment of convicts.

"Section 80-720. **Employment of convicts.** If, at any time, the board is of the opinion that it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or enclosures of the state prison, either in improvement of the public grounds or buildings or otherwise where they may be profitably employed, it has power to so employ such labor; it must, in such case, direct the warden accordingly in writing, and cause a record of such order to be entered at length on the records of the board. The board may,



HeinOnline -- 1963 vol. I 441 1963

Incentive payment. upon recommendation of the warden of the Montana state prison, make payments of money to any inmate of the state prison as an incentive to satisfactorily perform his or her work in the various prison industries. It shall be the duty of the board to authorize the payment of wages ranging from two cents (2¢) to fifty cents (50¢) per day depending on job grades. All jobs shall be graded according to the following criteria:

Wages.

Job grades.

(a) Knowledge

(b) Skill

(c) Physical effort

(d) Responsibility for equipment and materials

(e) Regard for safety of others

(f) Working conditions

Payment from industries receipts. All wages paid hereunder shall be paid from the *receipts from the sale of the products produced or manufactured by prison industries.*"

Amending clause. Section 231. Section 38-210, R. C. M. 1947, is amended to read as follows:

Moneys of insane persons—delivery to superintendent—use and disposal. "Section 38-210. **Moneys of insane person—disposal of.** When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars ($100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars ($100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged



HeinOnline -- 1963 vol. I 442 1963

or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars ($50.00) shall be withdrawn from such account and placed in the *agency fund in the state treasury,* to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund."

Deposit in agency fund.

Deposit in general fund.

Section 232. Section 80-322, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 80-322. **Reversion to soldiers' home of money left by deceased members and not claimed by heirs.** Any money left on deposit with the Montana soldiers' home by a deceased member which is not claimed by his heirs in ten (10) years shall revert to the Montana soldiers' home, *and be deposited in the state treasury* to be expended under the direction of the board of managers. Any personal effects of any deceased member, after the expiration of one (1) year from the date of his death, may be given to living members or be sold by said board at a public sale, unless claimed by the executor, administrator, or other legal representative, of said deceased member within said one (1) year. Said board is authorized to give to any living member any clothing of said deceased members as such living member may require for his health or welfare. All personal effects of a deceased member heretofore accumulated or on hand or which may hereafter accumulate at said soldiers' home may be sold or given to living members as herein provided. If such personal effects are not so claimed within such time, said personal effects may be sold. Said board shall give notice of such sale to be held at such soldiers' home on a date to be fixed by the board and such sales shall be advertised in some newspaper of general circulation, published and circulated in Flathead county, Montana

Unclaimed moneys of deceased members—soldiers' home—reversion—use.

Disposal of personal effects.

Sale—notice—publication.



HeinOnline -- 1963 vol. I 443 1963

and elsewhere if the board deems it advisable, in three consecutive weekly issues of said newspaper or newspapers, at least fifteen (15) days prior to said sale. The proceeds of said sale or sales *shall be deposited in the state treasury,* and if not claimed by his heirs in ten (10) years, *shall* revert to the Montana soldiers' home to be expended under the direction of the board of managers."

Deposit in state treasury—reversion.

Amending clause.

Section 233. Section 66-1812, R. C. M. 1947, is amended to read as follows:

Deposit in general fund.

"Section 66-1812. **Disposition of funds—expenses of board, how paid.** All funds received under this act, or under or by virtue of prior accountancy laws shall be received by the university and paid into the *general* fund.

Members of board of examiners in accountancy—expenses paid by university.

The members of the board of examiners in accountancy shall receive their actual traveling and hotel expenses incurred while engaged in the performance of their duties, as imposed upon them by this act, but shall receive no other compensation. Such expenses, together with the expense of preparing and issuing certificates, publishing notices of examinations, and all other expenses arising from the administration of this act shall be paid by the university."

Amending clause.

Section 234. Section 28-304, R. C. M. 1947, is amended to read as follows:

Board of education may require special reports.

"Section 28-304. **Reports**—*disposition of income.* The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand."

Deposit in state treasury—use.

*Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.*

Amending clause.

Section 235. Section 75-706, R. C. M. 1947, is amended to read as follows:

Designation of agricultural experiment station at Bozeman as beneficiary of funds.

"Section 75-706. **Designation of station as beneficiary.** Until otherwise provided by law the agricultural experiment station, now established at Bozeman, Gallatin



HeinOnline -- 1963 vol. I 444 1963

county, state of Montana, shall be the beneficiary of the funds in said act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said act. The treasurer of the executive board of the agricultural college and agricultural experiment station, at said city of Bozeman, is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of Congress."

Deposit of income—use.

*Any income received from the sale of agricultural products by the agricultural experiment station at Bozeman or by any of the agricultural sub-stations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and sub-stations.*

Amending clause.

Section 236. Section 75-807, R. C. M. 1947, is amended to read as follows:

Testing of wheat—fees.

"Section 75-807. **Fees chargeable for making tests.** Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in *the earmarked revenue* fund to be used in support of the laboratory."

Deposit in earmarked revenue fund.

Amending clause.

Section 237. Section 75-811, R. C. M. 1947, is amended to read as follows:

Grain inspection tests—fees—deposit in earmarked revenue fund—use—report.

"Section 75-811. **Disposition of fees and annual report of expenditures.** All fees collected by the Montana grain inspection laboratory for the tests conducted shall be deposited in *the earmarked revenue* fund to be used in the support of the laboratory. A full report of the expenditures of the laboratory with a statement of the source of the income, whether from state appropriations or from fees collected, shall be made a part of the annual report."

Amending clause.

Section 238. Section 75-723, R. C. M. 1947, is amended to read as follows:

"Section 75-723. **Disposal of moneys received by laboratory.**

Wool laboratory moneys—deposit in state treasury—use.

All moneys collected by the Montana wool laboratory shall be paid to the state treasurer and *used by the* wool



HeinOnline -- 1963 vol. I 445 1963

laboratory for the payment of salaries and expenses, including purchase of equipment and supplies, and erection of necessary buildings.

Appropriation—federal funds.

In addition, there is hereby appropriated for the Montana wool laboratory, all federal funds which may by the federal government be provided for the maintenance and operation of said Montana wool laboratory and also all funds which may be received by said laboratory or for its use and benefit for special purposes incident to, and in harmony with the purpose of said laboratory."

Funds abolished—transfer to general fund.

Section 239. The armory physical plant fund, post war planning and construction reserve fund, state fire insurance fund, Carey land act fund and photographers' license fund are abolished. All moneys in these funds are transferred to the general fund.

Amending clause.

Section 240. Section 27-313, R. C. M. 1947, is amended to read as follows:

State board of food distributors moneys—deposit in earmarked revenue fund.

"Section 27-313. **Fees to be deposited with treasurer —payments to be made.** All fees received by the state board of food distributors under this act shall be deposited with *the state* treasurer *and deposited in the earmarked revenue fund for the use* of the board. No expenses shall be incurred by said board in excess of the revenue derived from such fees."

Amending clause.

Section 241. Section 89-401, R. C. M. 1947, is amended to read as follows:

Water conservation moneys—deposit in earmarked revenue fund for board.

"Section 89-401. *Disposition of moneys collected.* For the purpose of carrying out the provisions of the water conservation act, acts amendatory thereto and supplementary thereof, and such other authority, powers and duties as are conferred upon the water conservation board by law, *the following moneys shall be deposited in the earmarked revenue fund for the use of the water conservation board*: all sums of money donated or contributed by the federal government and/or any department or agencies thereof; all gifts, donations, bequests and devices made to the state therefor; and proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired by the moneys thereof; all reimbursements for money advanced for the payment of the assessments upon state, school



HeinOnline -- 1963 vol. I 446 1963

granted and other public lands for the improvement thereof as provided by law; all reimbursements for money advanced for the investigation and survey of reclamation, electrification and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and dyking, drainage, and dyking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance and operation of plants or projects for the manufacture or distribution of electric current; revenues arising from projects constructed or owned by the board in excess of costs of operation and maintenance, and repayment of principal and interest of any moneys borrowed for the construction of such projects; all sums payable as rentals due for water use, maintenance or operation upon any project owned by the state or for which such rentals are due and payable under any contract or agreement made by any person, association or corporation with the said board; all sums of money received by the board for the use of electric current, in excess of the maintenance and operation upon any electrification system or project; all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities or towns or their proportion of the cost thereof, or from any other sources."

Repealing clause.

Section 242. Sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501 through 79-505, 3-203, 78-203, through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701 through 78-727, 78-728 through 78-736 enacted as sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016, 81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231 and 80-115, 80-747, R. C. M. 1947, are repealed.

Severability.

Section 243. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 4, 1963.



HeinOnline -- 1963 vol. I 447 1963

## CHAPTER 148

An Act to Amend Sections 26-202.1, 26-215, 26-510, Revised Codes of Montana, 1947, Relating to Hunting and Fishing Licenses, Classifications, Fees, and Powers and Duties Thereunder.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 26-202.1, Revised Codes of Montana, 1947, as amended, is amended to read as follows:

"Section 26-202.1. **Licenses—fees—classifications of licenses—fees and power under licenses.**

Class A—resident fishing license—fee.

(1) **Class A license—resident fishing license.** Upon payment of a fee of three dollars ($3.00) the applicant who qualifies therefore shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

Class A-1—resident game bird and bear license—fee.

(2) **Class A-1 license—resident game** *bird and bear* **license.** Except as herein provided, any *resident person of Montana* who is twelve (12) years of age or older, may, upon payment of *a fee of two dollars ($2.00) receive* a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game *birds and bear and possess the dead bodies of game birds and bear* which are *so* authorized by *regulations of* the commission.

Residents under 18—certificate of competency.

(a) On and after January 1, *1964* no hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

Duty to provide instruction in use of firearms.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.



HeinOnline -- 1963 vol. I 448 1963

Class A-2—special bow and arrow license—fee.

(3) **Class A-2 license—special bow and arrow license.** Any holder of a Class A-1 license *and any one of the following: a Class A-3, A-4, A-5, B-2, or B-4 license;* may upon payment of an additional sum of two dollars ($2.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, *as so licensed* and in special areas, as may be designated by the fish and game commission.

Additional deer and elk licenses—fee.

*(4) Class A-3, A-4, A-5 licenses. Any holder of a Class A-1 license who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to any one or more of the following licenses: Class A-3, Deer A Tag, one dollar ($1.00); Class A-4, Deer B Tag, one dollar ($1.00); Class A-5, Elk Tag, one dollar ($1.00); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by regulation of the commission.*

Class B—nonresident fishing license—fee.

(5) **Class B license — nonresident** *fishing license.* Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars ($10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

Class B-1—nonresident game bird license—fee.

(6) **Class B-1 license — nonresident game bird license.** Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars ($25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.



HeinOnline -- 1963 vol. I 449 1963

Class B-2—nonresident big game license—fee.

(7) **Class B-2 license — nonresident big game license.** Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of one hundred dollars ($100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, kill game animals, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds; and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

Class B-3—temporary nonresident fishing license—fee.

(8) **Class B-3 license — temporary nonresident or tourist license.** Any nonresident of the state of Montana, upon payment of the sum of three dollars ($3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

Special big game license—fees.

(9) **Special licenses.** Any applicant who is the holder af a Class A-1 resident *bird and bear license* or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars ($25.00).

Mountain Goat, five dollars ($5.00).

Mountain Sheep, fifteen dollars ($15.00).

Bison or Buffalo, twenty-five dollars ($25.00).

*Antelope, one dollar ($1.00).*

Class C—trapper's license—fee.

*(10)* **Class C license — trapper's license.** Any holder of a Class *A-1* license, upon making application and paying the sum of ten dollars ($10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws



HeinOnline -- 1963 vol. I 450 1963

of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

Class C-1—land owner's trapper's license—fee.

*(11)* **Class C-1 license — land owner's trapper's license.** Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof to trap any furbearing animal, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

Resident over 70 may fish without license.

*(12)* **Exception.** Any person a resident of the state of Montana as defined in section 26-202.3, of the Revised Codes of Montana, 1947, who has attained the age of seventy (70) years shall be entitled to fish without a Class A license, provided that said persons carry proof of age in lieu of the Class A license described in the foregoing subsection (1), and provided that for persons convicted of any violation of the fish and game laws or regulations of the state of Montana, the privilege conferred by this subsection shall be revoked for a period of not less than six (6) months."

Violation—revocation.

Amending clause.

Section 2. Section 26-215, Revised Codes of Montana, 1947, as amended, is amended to read as follows:

Persons under 15 may fish without license—excepted game.

"Section 26-215. **Animals which may be hunted without license—persons under fifteen years of age not required to have** *fishing* **license.** The provisions of the act shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory animals, prairie dogs, ground squirrels, jack rabbits, gophers, or English sparrows, crows, hawks, fish ducks, blue heron, snow owls, great gray owls, great horned owls, black birds, kingfishers, magpies, jays and eagles, which may be pursued, hunted, taken killed, shot, trapped, possessed or transported at any time; and minors under fifteen (15) years of age may fish for and take fish, during the open season without a license."



HeinOnline -- 1963 vol. I 451 1963

Amending clause.

Section 3. Section 26-510, Revised Codes of Montana, 1947, as amended, is hereby amended to read as follows:

Special wild turkey tags—bag limit.

"Section 26-510. *Special* **wild turkey tags—fee.** The state fish and game commission may issue wild turkey tags to the holder of a valid Class *A-1*, Class B-1, or Class B-2 license. Each tag shall authorize the holder to hunt, shoot, capture or possess one (1) wild turkey during such times and such places as the commission shall authorize an open season on wild turkey.

Fee.

The fee for a wild turkey tag shall be two dollars ($2.00). Turkey tags shall be issued either by a drawing system, or in unlimited number according to such rules and regulations as the commission shall prescribe."

Effective May 1, 1964.

Section 4. This act shall be effective May 1, 1964.

Approved March 5, 1963.

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## CHAPTER 149

An Act Providing for Supplemental Publication by Radio Broadcast and Television Broadcast of a Summary of Any Notice Required By Law to Be Published By Any Official of the State or Any of Its Political Subdivisions.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Officials may supplement required publication of notice by radio or television broadcast.

Section 1. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice, or by both of such broadcasts, when, in his judgment, the public interest will be served. The summary of such notice only shall be read with no reference to any person by name then a candidate for political office, and such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates, and announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice, unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in



HeinOnline -- 1963 vol. I 452 1963

any county other than the county of origin of the legal notice.

Section 2. Each radio or television station broadcasting any summary of a legal notice shall for a period of six (6) months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

Station shall retain for six months.

Section 3. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the radio or television station broadcasting the same.

Proof by affidavit.

Approved March 5, 1963.

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## CHAPTER 150

An Act to Amend Section 53-615, R. C. M. 1947, Relating to Fees on Trucks, Tractors, Trailers, Semitrailers and Other Vehicles; Providing for Certain Exemptions Therefrom; Amending Section 53-642, R. C. M. 1947, Relating to Movement of Special Mobile Equipment Over the Highways and Redefining the Term 'Special Mobile Equipment'; Providing That Equipment and Machinery Which Cannot Be Self-Propelled or Towed Upon the Highways of This State Shall Be Exempt From the Terms and Provisions of Title 53, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 53-615, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 53-615. **Additional fees on trucks, tractors, trailers and semitrailers.** In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Gross vehicle weight—trucks, tractors, trailers, semitrailers.

Fees.

Schedule I:

Up to 6,000 lbs. ..... $ 6.00



HeinOnline -- 1963 vol. I 453 1963

| | |
|---|---|
| 6,001 lbs. or more, and less than 8,000 lbs. | 10.00 |
| 8,001 lbs. or more, and less than 10,000 lbs. | 14.00 |
| 10,001 lbs. or more, and less than 12,000 lbs. | 16.00 |
| 12,001 lbs. or more, and less than 14,000 lbs. | 18.00 |
| 14,001 lbs. or more, and less than 16,000 lbs. | 22.00 |
| 16,001 lbs. or more, and less than 18,000 lbs. | 30.00 |
| 18,001 lbs. or more, and less than 20,000 lbs. | 40.00 |
| 20,001 lbs. or more, and less than 22,000 lbs. | 50.00 |
| 22,001 lbs. or more, and less than 24,000 lbs. | 75.00 |
| 24,001 lbs. or more, and less than 26,000 lbs. | 100.00 |
| 26,001 lbs. or more, and less than 28,000 lbs. | 125.00 |
| 28,001 lbs. or more, and less than 30,000 lbs. | 165.00 |
| 30,001 lbs. or more, and less than 32,000 lbs. | 210.00 |
| 32,001 lbs. or more, and less than 34,000 lbs. | 255.00 |
| 34,001 lbs. or more, and less than 36,000 lbs. | 300.00 |
| 36,001 lbs. or more, and less than 38,000 lbs. | 345.00 |
| 38,001 lbs. or more, and less than 40,000 lbs. | 390.00 |
| 40,001 lbs. or more, and less than 42,000 lbs. | 435.00 |

**Gross vehicle weight—trailers, semitrailers.**

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight described above, and as set by the licensee in his application except as otherwise provided in this act the following fees:

**Fees.**

Schedule II:

Trailers Other Than House Trailers.

| | |
|---|---|
| Up to 2,500 lbs. for personal use | Exempt |
| Up to 2,500 lbs. for commercial use | $ 3.50 |
| 2,501 lbs. or more, and less than 6,000 lbs. | 4.50 |
| 6,001 lbs. or more, and less than 8,000 lbs. | 12.00 |
| 8,001 lbs. or more, and less than 10,000 lbs. | 14.00 |
| 10,001 lbs. or more, and less than 12,000 lbs. | 16.00 |
| 12,001 lbs. or more, and less than 14,000 lbs. | 18.00 |
| 14,001 lbs. or more, and less than 16,000 lbs. | 22.00 |
| 16,001 lbs. or more, and less than 18,000 lbs. | 30.00 |
| 18,001 lbs. or more, and less than 20,000 lbs. | 40.00 |
| 20,001 lbs. or more, and less than 22,000 lbs. | 50.00 |
| 22,001 lbs. or more, and less than 24,000 lbs. | 75.00 |
| 24,001 lbs. or more, and less than 26,000 lbs. | 100.00 |
| 26,001 lbs. or more, and less than 28,000 lbs. | 125.00 |
| 28,001 lbs. or more, and less than 30,000 lbs. | 165.00 |



HeinOnline -- 1963 vol. I 454 1963

30,001 lbs. or more, and less than 32,000 lbs. ..... 210.00
32,001 lbs. or more, and less than 34,000 lbs. ..... 255.00
34,001 lbs. or more, and less than 36,000 lbs. ..... 300.00
36,001 lbs. or more, and less than 38,000 lbs. ..... 345.00
38,001 lbs. or more, and less than 40,000 lbs. ..... 390.00
40,001 lbs. or more, and less than 42,000 lbs. ..... 435.00

House trailers—fees—50 cents per foot.

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided in this act, a fee equal to fifty cents (50¢) for each foot of over-all trailer body length, exclusive of bumpers and hitch.

Additional fees—weight limits—trucks, etc., $50.00 per 2,000 pounds.

Provided, that in addition to the fees provided for in Schedules I and II of this act, for each motor truck, truck-tractor, trailer, or semitrailer hauling loads in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be collected a fee of fifty dollars ($50.00) for each two thousand (2,000) pounds, or fraction thereof.

Ranch and farm vehicles—fees.

Provided further, on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, except motor trucks owned and operated by co-operative associations or co-operative marketing associations, shall be paid and collected annually a fee equal to twenty per cent (20%) of the fees provided in Schedule 1 and Schedule II above; provided, however, the minimum fee under Schedule I and Schedule II shall be four dollars ($4.00). The terms 'trailers and semitrailers' as used herein shall not include farm wagons.

Additional fees—vehicles hauling certain products.

Provided further, that there shall be paid and collected annually a fee equal to seventy five per cent (75%) of the fees provided in Schedule I and Schedule II above on *pole trailers; trucks, truck-tractors, trailers and semitrailers*



HeinOnline -- 1963 vol. I 455 1963

*used exclusively in hauling livestock, logs, and ready-mix concrete; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.*

Quarterly license—fee.

When the gross weight license fee applied for on any vehicle exceeds twenty-four thousand (24,000) pounds, licenses for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three-months' period for one-fourth (¼) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar ($1.00) shall be charged. The state highway commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

Violation—penalties.

No vehicle licensed under the provisions of this section shall be operated over the public highways unless the owner and/or operator thereof within ten (10) days after the expiration of any such three-month period apply for, and pay the required fee for, a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) days, shall be guilty of a misdemeanor, and in addition shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If,

Vehicle may be impounded.

within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police shall impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol, until such requirement is met.

Bus and auto stage—fees.

Provided further, that there shall be paid and collected annually for each bus or auto stage with the exception of school buses the sum of seven dollars ($7.00) per seat exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof; provided further, that motor vehicles which are regularly used to haul freight and passengers shall be



HeinOnline -- 1963 vol. I 456 1963

taxed upon the basis of the gross weight schedule hereinabove established; provided further, that school buses shall not be exempt if they enter charter service."

Amending clause.

Section 2. Section 53-642, R. C. M. 1947, is amended to read as follows:

"Special mobile equipment" defined.

"53-642. **'Special mobile equipment' defined.** 'Special mobile equipment' means every vehicle *which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunkhouses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R. C. M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term 'special mobile equipment' shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.*

Excepted equipment.

*Section 3. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, shall not be*



HeinOnline -- 1963 vol. I 457 1963

*subject to any of the terms and provisions of title 53, R. C. M. 1947.*

Effective immediately.

Section 4. This act shall be effective immediately upon its passage and approval.

Approved March 5, 1963.

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## CHAPTER 151

An Act Increasing the Compensation of Members and Employees of the Montana Liquor Control Board; Amending Section 4-105, R. C. M. 1947, Relating to the Per Diem Compensation to Be Paid to Members of Said Board; and Amending Section 4-108, R. C. M. 1947, Relating to the Maximum Annual Salaries to Be Paid to Employees of Said Board.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 4-105, R. C. M. 1947, is amended to read as follows:

Liquor control board—per diem—annual limitation—traveling expenses.

"4-105. **Liquor control board — compensation — meetings.** Each of the members of the Montana liquor control board shall receive, as compensation for his official services the sum of *twenty dollars ($20.00)* per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, provided, however, that the maximum amount each member of commission shall receive for per diem shall not exceed one thousand five hundred dollars ($1,500) per annum, together with the traveling expenses while away from home in the performance of the duties of his office. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board."

Meetings.

Amending clause.

Section 2. Section 4-108, R. C. M. 1947, is amended to read as follows:

Schedule of salaries for state liquor administrator and other employees.

"4-108. **Salaries of state liquor administrator and other employees—duties of assistant administrator.** The board shall fix the following salaries of its employees at such sums as it deems advisable, to-wit: The salary of the state liquor administrator in a sum not exceeding



HeinOnline -- 1963 vol. I 458 1963

*nine thousand dollars ($9,000)* per year; the salary of the assistant state liquor administrator in a sum not exceeding *seven thousand two hundred dollars ($7,200)* per annum: the *salaries* of the *supervisors of the accounting department, the data processing department and the license department in a sum* not exceeding *six thousand six hundred dollars ($6,600)* per annum *each;* the salary of the *supervisor of the warehouse department in a sum* not exceeding *six thousand dollars ($6,000)* per annum; *the salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors and field inspectors in a sum not exceeding five thousand seven hundred sixty dollars ($5,760) per annum each;* the salary of a vendor of a 'Class A' store in a sum not exceeding *five thousand eight hundred seventy-five dollars ($5,875)* per annum; the salary of one (1) assistant vendor of a 'Class A' store in a sum not exceeding *five thousand two hundred fifty dollars ($5,250) per annum;* the salary of any other employee of a 'Class A' store in a sum not exceeding *four thousand nine hundred fifty dollars ($4,950)* per annum; the salary of a vendor of a 'Class B' store in a sum not exceeding *five thousand dollars ($5,000)* per annum; the salary of an assistant vendor and any other employee of a 'Class B' store in a sum not exceeding *four thousand one hundred twenty-five dollars ($4,125)* per annum; the salary or compensation of a vendor of a 'Class C' store in a sum not exceeding *four thousand five hundred dollars ($4,500)* per annum; the salary of an assistant vendor and any other employee of a 'Class C' store in a sum not exceeding the sum of *three thousand seven hundred fifty dollars ($3,750)* per annum; the salary of any other employee of the board in the sum not exceeding *six thousand dollars ($6,000)* per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

Duties of assistant.

The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe."

Repealing clause.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.



HeinOnline -- 1963 vol. I 459 1963

Effective immediately.

Section 4. This act shall be in full force and effect from and after the date of passage and approval.

Approved March 5, 1963.

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## CHAPTER 152

An Act to Amend Sections 75-4138 and 75-4139, R. C. M. 1947, Relating to the Establishment of High Schools to Provide That a County High School May Establish a Branch of the County High School; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 75-4138, R. C. M. 1947, is amended to read as follows:

School district may establish high school or branch of county high school.

Section 75-4138. **School districts may establish high schools** *and county high schools a branch*—**transportation.** Whenever the interests of any school district *or a county high school* require it, the board of trustees of the district *or the board of trustees of the county high school,* with the approval of the superintendent of public instruction, may establish a high school *for the district or a branch of the county high school* and make the provisions for its quarters, equipment, and teaching force in the manner provided for in section 75-4139, provided, that the transportation and payment of tuition, or the payment of board, room and tuition for the high school students of the district for the purpose of attending a high school in another district, shall be in lieu and the equivalent of establishing a high school and making the necessary provisions for its quarters, equipment, and teaching force, provided further that the total amount of transportation paid to any high school student from all sources shall not exceed the maximum amount as stipulated in section 1010 of the Revised Codes of Montana, 1935."

Transportation and tuition.

Amending clause.

Section 2. That section 75-4139, R. C. M. 1947, is amended to read as follows:

Petition for approval of state superintendent.

"Section 75-4139. **Approval of superintendent of public instruction—how secured.** When the board of trustees of any school district desires to establish a high school, *or a county high school desires to establish a branch*



HeinOnline -- 1963 vol. I 460 1963

*of the county high school,* it shall petition the superintendent of public instruction, prior to June first of the current year for the permission to do so, setting forth in writing the facts regarding the enrollment in the elementary grades, the distance to other high schools, the road conditions, the taxable valuation of the district, the building facilities and such other information as the state superintendent may require. An investigation shall be made thereafter by a designated representative of the superintendnt of public instruction and his report on the petition filed with it before the petition is acted upon. The superintendent of public instruction must have passed favorably on any such petition before the high school *or branch of the county high school* proposed may be established by the district.

Investigation—state superintendent.

When the establishment of a high school *or a branch of the county high school* has been approved in accordance with the provisions of this section, the county superintendent of schools shall immediately investigate to find the number of students who will probably attend such newly established high school *or branch of the county high school.* This number of students shall be used as a basis for making out the budget for the first year of operation. He shall then assist the board of trustees of the school district establishing such high school *or the trustees of a county high school establishing a branch,* in preparing and submitting a budget for the maintenance of such high school *or branch of the county high school.* Said budget shall, otherwise than specified above, be prepared, submitted, approved and distributed in the same manner as other high school budgets are prepared, submitted, approved and distributed."

Investigation—county superintendent.

Basis for budget.

Budget.

Section 3. This act shall be in full foce and effect from and after the date of its passage and approval.

Effective immediately.

Approved March 5, 1963.

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## CHAPTER 153

An Act Amending Section 92-411, R. C. M. 1947, to



HeinOnline -- 1963 vol. I 461 1963

Define 'Employee' as a Recipient of General Relief Who Is Performing Work for a County of This State.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 92-411, R. C. M. 1947, is amended to read as follows:

"Employee" and "workman" are synonymous—defined.

"Section 92-411. **Employee and workmen defined.** 'Employee' and 'workman' are used synonymously and mean every person in this state, including a contractor other than an 'independent contractor' who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, including city and town firemen, highway patrolmen, police officers, county sheriffs, deputy sheriffs, constables, truant officers and all peace officers, also all public officers and ther deputies, assistants and employees, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service."

"Employee" includes recipient of relief performing work for county.

*'Employee' also means a recipient of general relief who is performing work for a county of this state under the provisions of section 71-307.*

Approved March 5, 1963.

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## CHAPTER 154

An Act to Establish a Stable and Uniform Basis for Interstate Cooperation in Driver Licensing and the Reporting of Convictions and to Be Known as the Driver License Compact; Setting Forth the Basic Purposes of the Compact; Defining Certain Terms Used in Act;



HeinOnline -- 1963 vol. I 462 1963

Requiring Party State to Report Convictions to Licensing Authority of Home State of Licensee; Providing Party State May Give Same Effect of Conviction Regardless of Jurisdiction of Occurrence; Providing That License Authority in Party State Shall Not Issue License to Party Whose License Has Been Suspended, Revoked or to Party Who Fails to Surrender License of Another Party State; Providing That Adoption of Compact Will Not Nullify Existing Statutes; Providing for Administrator of Act; Providing for Entry and Withdrawal From Compact; Providing For Construction and Severability of Act; Providing That If Any Part of Act Held Unconstituitional It Shall Not Affect Remaining Parts of Act; Defining 'Licensing Authority' and 'Executive Head'; Providing Authority to Furnish Information to Member States; Providing That Administrator Shall Not Be Entitled to Additional Compensation; Requiring Agencies or Court to Report to State Agency; Repealing All Acts or Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Act cited as "driver license compact."

Section 1. This act shall be known and may be cited as the "Driver License Compact."

## ARTICLE I

### *Findings and Declaration of Policy*

Findings and declaration of policy—party states.

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the



HeinOnline -- 1963 vol. I 463 1963

operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

## ARTICLE II

### *Definitions*

Definitions.

As used in this compact:

"State."

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Home state."

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

"Conviction."

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or fortfeiture is required to be reported to the licensing authority.

## ARTICLE III

### *Reports of Conviction*

Report of conviction—party state.

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture



HeinOnline -- 1963 vol. I 464 1963

of bail, bond or other security; and shall include any special findings made in connection therewith.

## ARTICLE IV

### *Effect of Conviction*

Effect of conviction—home state.

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

## ARTICLE V

### *Application for New Licenses*

Application for new license—investigation of record.

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the



HeinOnline -- 1963 vol. I 465 1963

applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

## ARTICLE VI

### *Applicability of Other Laws*

Applicability—other laws.

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

## ARTICLE VII

### *Compact Administrator and Interchange of Information*

Administrator.

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his

Procedure.

state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.



HeinOnline -- 1963 vol. I 466 1963

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact. Exchange of information.

## ARTICLE VIII

*Entry Into Force and Withdrawal*

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law. Effective upon enactment.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal. Withdrawal by party state—effect.

## ARTICLE IX

*Construction and Severability*

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. Liberal construction. Severability.

Section 2. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary "Licensing authority" defined.



HeinOnline -- 1963 vol. I 467 1963

to facilitate the administration of articles III, IV and V of the compact.

Compact administrator—expenses.

Section 3. The compact administrator provided for in article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

"Executive head" defined.

Section 4. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

Court shall report to highway patrol board.

Section 5. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

Reference.

Section 6. Items enumerated in article IV (a), subsections (1), (2), (3) and (4) of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

Effect of conduct.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

Repealing clause.

Section 7. That all acts or parts of acts in conflict herewith are hereby repealed.

Review—limitation.

Section 8. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Com-



HeinOnline -- 1963 vol. I 468 1963

pact'' shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

Approved March 5, 1963.

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## CHAPTER 155

An Act Amending Section 15-1001, R. C. M. 1947, to Provide for Corporate Acts to Be Accomplished by Resolution Signed By All of the Stockholders and/or Directors Without the Formality of a Regular Meeting of Stockholders or Directors.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Section 1. Section 15-1001, R. C. M. 1947, is amended to read as follows: Amending clause.

''Section 15-1001. **Corporate records — to consist of what, and how kept.** All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and, in the record of directors' meetings, who absent. If requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full, and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation; provided, that in lieu of embracing in the record of stockholders' or members' meetings who were present, a list showing the name of those present at any such meeting, certified by the chairman and secretary thereof, may be filed and kept in the office of the secre- Required corporate records. Inspection. List of stockholders in office of secretary.



HeinOnline -- 1963 vol. I 469 1963

Resolution without formal meeting—consent of directors.

tary of the corporation. *Provided, however, any corporate act to be performed by the directors of a corporation may be performed by resolution with the signed consent of all of the directors of said corporation then living, without a formal meeting of the directors being held therefor. Such resolution shall be placed in the minute book of the corporation. Provided, further, that any corporate act to be peformed by the stockholders of a corporation may be performed by a resolution with the signed consent of all of the stockholders of said corporation (or their proxies or personal representatives), without a formal meeting of the stockholders being held therefor. Such resolution shall be placed in the minute book of the corporation."*

Resolution without formal meeting—consent of stockholders.

Effective immediately.

Section 2. This act shall go into full force and effect upon passage and approval.

Approved March 5, 1963.

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## CHAPTER 156

An Act to Amend Section 32-2001 of the Revised Codes of Montana, 1947, By Extending the Policy of the State to Include Controlling of Access to Throughways and Intersections With Throughways; Amending Section 32-2002 of the Revised Codes of Montana, 1947, By Providing Definitions for the Terms 'Arterial Highway', 'Throughway', and 'Throughway Intersection Area' and By Including in the Term 'Controlled Access Highway', 'Portions of Throughways and Roads, Streets and Highways Within a Throughway Intersection Area', Amending Section 32-2003 of the Revised Codes of Montana, 1947, By Providing for Control of Access to Throughways or Roads, Streets or Highways Within a Throughway Intersection Area and By Providing That No Portion of a Throughway or Road, Street or Highway Within a Throughway Intersection Area Shall Be Designated As a Controlled Access Highway Except Upon Petition of the Governing Body of Cities, Towns or Counties and Providing the Petition To Be Irrevocable Except Upon Concurrence of the State Highway Commission; Amending Section 32-2006 of the Revised Codes of Montana, 1947, By Providing for the Acquistition of Property for Controlled Access



HeinOnline -- 1963 vol. I 470 1963

Highways or Facilities; Amending Section 32-2007 of The Revised Codes of Montana, 1947, By Providing for Elimination of Crossings With Controlled Access Highways or Facilities; Amending Section 32-2008 of the Revised Codes of Montana, 1947, Relating to Service Roads by Relating to Controlled Access Highways as Well as 'Facilities'; Amending Section 32-2009 of the Revised Codes of Montana, 1947, Relating to Marking With Signs By Relating the Same to Controlled Access Highways as Well as 'Facilities'; Amending Section 32-2010 of the Revised Codes of Montana, 1947, Relating to Violations By Prohibiting Connections With a Controlled Access Highway or Facility Except By Permission of the State Highway Commission and the Local Governing Body Having Jurisdiction Over the Highway or Facility; Repealing All Acts and Parts of Acts in Conflict Herewith; Providing That This Act Shall Be in Full Force and Effect From the Date of Its Passage and Approval.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Amending clause.

Section 1. That section 32-2001 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Poilcy of state—controlled access.

"Section 32-2001. **Purpose.** It is the declared policy of this state to facilitate the flow of traffic and promote public safety by controlling access to highways included by the bureau of public roads in the national system of interstate highways *and to throughways and intersections with throughways.*"

Amending clause.

Section 2. That section 32-2002 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Definitions.

"Section 32-2002. **Definitions.** When used in this act:

"Interstate highway."

(a) 'Interstate highway' means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

"Controlled access highway."

(b) 'Controlled access highway' means all portions of any interstate highway,*throughway or public read or street within a throughway intersection area* which the state high-



HeinOnline -- 1963 vol. I 471 1963

way commission shall determine and designate for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that the property abuts upon such *road, street or* highway, or for any other reason, and shall further include those portions of spurs to the interstate highway system which the state highway commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

"Controlled access facility."

(c) 'Controlled access facility' means and includes all streets, alleys, public roads, private roads and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

"Existing highway."

(d) 'Existing highway' means and includes all highways, roads and streets heretofore established, constructed and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated."

"Arterial highway."

*(e) 'Arterial highway' means any state highway designated by agreement between the state highway commission and the secretary of commerce as a part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic an a continuous route.*

"Throughway."

*(f) 'Throughway' means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.*

"Throughway intersection area."

*(g) 'Throughway intersection area' means an area within a three hundred foot (300') radius from the point of intersection of the center lines of a throughway and any public road, street or highway.*

Amending clause.

Section 3. That section 32-2003 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Designation as controlled access highway—resolution of commission—finding.

"Section 32-2003. **Designation as controlled access highway—resolution—findings.** No part or portion of *any* interstate highway, *throughway, or of any public road, street or highway within a throughway intersection area*



HeinOnline -- 1963 vol. I 472 1963

shall be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the owners or occupants of the abutting land or other persons have no easement of access or only a limited easement of access, light, air or view by reason of the fact that their property abuts upon such highway or for any other reason: It is hereby declared that the requirement by the federal government that access be controlled *may be a basis of* necessity for the passing of such resolution by the highway authorities; nor shall any part or portion of any interstate, or spurs to the interstate highway system *or of any throughway or of any public road, street or highway within a throughway intersection area* be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the rights of, or easements to access, light, air or view be acquired by the state so as to prevent such part or portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage: *provided further that no portion of a throughway or public road, street or highway within a throughway intersection area shall be designated a controlled access highway except upon petition in writing of the governing body of any incorporated city or town within which corporate limits such area, or any part thereof, may be located, nor if such area lies wholly or partially without any such corporate limits, except upon the petition of the board of commissioners of the county within the boundaries of which such area may be located; any such petition to be filed with the state highway commission and, once filed, to be irrevocable except upon concurrence of the state highway commission.* Such resolution shall contain a statement of the reasons for the adoption thereof, and shall set forth the location, distance and termini of the portion of the highway designated as a controlled access highway."

Basis of necessity—federal requirement.

Further finding.

Written petition—incorporated city or town.

County commissioners.

Resolution.

Section 4. That section 32-2006 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. I 473 1963

Authority to acquire property for facility.

"Section 32-2006. **Acquisition of property for facility.** For the purpose of this act, the highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for *controlled access highways or* controlled access facilities and service roads including rights of access, air, view, and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. A right of way is hereby given, dedicated and set apart for *controlled access highways or* controlled access facilities through, over, upon or across any county road and any street or alley intersecting a controlled access highway and the acquisition of any such county road, street, or alley for use as a *controlled access highway or* controlled access facility shall be deemed superior and a more necessary public use and purpose than the public use or purpose to which such road, street or alley has theretofore been dedicated."

Right of way over roads and streets.

Amending clause.

Section 5. That section 32-2007 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Authority—new and existing facilities, elimination of grade crossings.

"Section 32-2007. **New and existing facilities—grade crossing eliminations.** The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade *of controlled access highways or* of controlled access facilities with existing state and county roads, and city or town streets at the right-of-way boundary line of such controlled access *highway or* facility; and after the establishment of any controlled access *highway or* facility, no *private or public* highway or street which is not a part of said facility shall intersect the same at grade. No incorporated city or town street, county or state highway, or other public way shall be opened into or connected with any such *controlled access highway or* controlled access facility without the consent and previous approval of the highway authority in the state, county, incorporated city or town having jurisdiction over such *controlled access highway or* controlled access facility. Provided, however, that the *state highway* commission may, whenever it determines that traffic is not thereby impeded

Commission may authorize continued intersection.



HeinOnline -- 1963 vol. I 474 1963

and that public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas; *and provided further that, as to interstate highways and throughways, the state highway commission shall have the sole jurisdiction to determine the existence and location of any intersection therewith.*"

Sole jurisdiction.

Section 6. That section 32-2008 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Amending clause.

"Section 32-2008. **Existing roads and streets as service roads.** In connection with the development of any *controlled access highway or* controlled access facility the state, county, or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over *controlled access highways or* controlled access facilities under the terms of this act, whenever such local service roads are necessary for carrying out any of the provisions of this act. Such local service roads or streets shall be of appropriate design, and shall be separated from the *controlled access highway or* controlled access facility by means of all devices determined to be necessary in carrying out the provisions of this act."

Authority over existing roads and streets as service roads.

Section 7. That section 32-2009 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Amending clause.

"Section 32-2009. **Marking of facility with signs.** After the opening of any new and additional *controlled access highway or* controlled access facility or after the designation and establishment of any existing street or highway as included, the particular highways and streets or those portions thereof designated and established shall be physically marked and indicated by the erection and maintenance of signs indicating to drivers of vehicles that they are entering a controlled access area and that they are leaving a controlled access area."

Facility must be marked.

Section 8. That section 32-2009.1 of the Revised Codes

Amending clause.



HeinOnline -- 1963 vol. I 475 1963

of Montana, 1947, be, and the same is hereby amended to read as follows:

Commercial structures forbidden.

"Section 32-2009.1. **Commercial enterprise or structure.** No commercial enterprise or structure can be constructed or operated on the publicly-owned right of way of, or on any publicly-owned or publicly-leased land used for, or in connection with a *controlled access highway or* controlled access facility."

Amending clause.

Section 9. That section 32-2010 of the Revised Codes of Montana, 1947, be. and the same is hereby amended to read as follows:

Violations—penalties.

"Section 32-2010. **Violations specified — penalty.** After the opening of any new and additional controlled access highway *or* facility or after the designation and establishment of any existing street or highway as included *therein,* it shall be unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled access *highways or* facilities; (2) to make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled access *highway or* facility from a local service road except through an opening provided for that purpose in the dividing curb, or dividing section, or dividing line which separates such service road from the controlled access *highway or* facility proper*; or (5) to construct, operate or maintain any road or private driveway connecting with a controlled access highway or controlled access facility without first obtaining permission in writing from the state highway commission and, except in the case of an interstate highway, from the local governing body having jurisdiction over such highway or facility.* Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment."



HeinOnline -- 1963 vol. I 476 1963

Section 10. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Section 11. This act shall be in full force and effect from the date of its passage and approval. Effective immediately.

Approved March 5, 1963.

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## CHAPTER 157

An Act to Accept the Retrocession By the United States of America of Concurrent Police Jurisdiction Over the Rights-of-Way of the Blackfeet Highway and Over the Rights-of-Way of Its Connections With the Glacier National Park Road System on the Blackfeet Indian Reservation in the State of Montana; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That the provisions of the act of Congress of March 15, 1958, P. L. 85-343, 85th Congress, S. 1828, 72 Stat. 35-36, to retrocede to the state of Montana such concurrent police jurisdiction as has been ceded to the United States of America over the rights-of-way of the Blackfeet highway, including the highway itself, and over the rights-of-way of its connection with the Glacier National Park road system on the Blackfeet Indian reservation, including the highways themselves, are hereby accepted by the state of Montana as required by section 2 of said act of March 15, 1958 (72 Stat. 35-36) with the understanding on the part of the state of Montana that the laws and regulations of the United States of America pertaining to Glacier National Park shall cease to apply to the territory of said rights-of-way and highways as in said act of the Congress made and provided. Retrocession of federal jurisdiction over Blackfeet highways accepted.

Section 2. This act shall be in full force and effect from and after its passage and approval. Effective immediately.

Approved March 5, 1963.

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## CHAPTER 158

An Act to Amend Section 11-966, R. C. M. 1947, to Provide That a City or Town Council Has Power to Con-



HeinOnline -- 1963 vol. I 477 1963

tract an Indebtedness on Behalf of a City or Town for Building, Purchasing, Constructing and Maintaining Devices Intended to Protect the Safety of the Public From Open Ditches Carrying Irrigation or Other Water.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 11-966, R. C. M. 1947, is amended to read as follows:

Power of city or town council to incur indebtedness—purposes.

"Section 11-966. **Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, *building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water,* to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words 'value of the taxable property' being used herein in the same sense as in section 6 of article XIII of the Constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or

Limitation on amount.

Submission to voters.



HeinOnline -- 1963 vol. I 478 1963

sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

Additional indebtedness—sewerage and water.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and carried in the affirmative by a vote of the majority of said taxpayers who vote upon such question.

Limitation on amount.

Submission to voters.

(3) It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring

Notice of desire of city to purchase water supply—agreement.

Eminent domain.



HeinOnline -- 1963 vol. I 479 1963

Payment to owner within six months.

property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six (6) months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure an appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

Duty to provide water supply.

Jurisdiction over public works and appurtenances.

(4) Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement."

Condemnation.

Effective immediately.

Section 2. This act is effective on its passage and approval.

Approved March 5, 1963.

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## CHAPTER 159

An Act to Provide That All Meetings of Public or Governmental Bodies, Boards, Bureaus, Commissions or Agencies of the State or Any Political Subdivision of the State, or Organizations or Agencies Supported in Whole or in Part By Public Funds, or Expending



HeinOnline -- 1963 vol. I 480 1963

Public Funds, Shall Be Open to the Public and Providing Exceptions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Open meetings—liberal construction.

Section 1. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the poeples' business. It is the intent of this act that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the act shall be liberally construed.

Governmental meetings open to public.

Section 2. All meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organization or agencies supported in whole or in part by public funds, or expending public funds, at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state shall be open to the public, except as otherwise specifically provided by law and except any meeting involving or affecting;

Exceptions.

(1) National or state security.

(2) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.

(3) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.

(4) The purchasing of public property, the investing of public funds or other matters involving competition or bargaining which, if made public may adversely affect the public security or financial interest of the state or any political subdivision or agency of the state.

(5) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.



HeinOnline -- 1963 vol. I 481 1963

(6) Law enforcement, crime prevention, probation or parole.

Minutes—inspection.

Section 3. Appropriate minutes of all meetings declared to be open, shall be kept and shall be available for inspection by the public.

Approved March 5, 1963.

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## CHAPTER 160

An Act Amending Sections 41-1201 and 41-1202, R. C. M. 1947, Changing the Membership of the Apprenticeship Council; Providing That the Council Is a Part of the Department of Labor and Industry; Providing for the Election of a Chairman and Vice-Chairman of the Council; Authorizing the Commissioner of Labor and Industry, Subject to the Approval of the Council, to Appoint a Director of Apprenticeship and Other Clerical, Technical and Professional Staff as May Be Necessary; and Providing That the Director of the Council Shall Serve As Its Secretary Without a Vote.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 41-1201, R. C. M. 1947, is amended to read as follows:

Governor shall appoint apprenticeship council.

"Section 41-1201. **Apprenticeship council.** (a) *The governor of the state of Montana* shall appoint an apprenticeship council, *which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades.* The terms of office of the members of the apprenticeship council first appointed by the *governor of the state of Montana* shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. *After the expiration of the original terms,* each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member

Term of office.



HeinOnline -- 1963 vol. I 482 1963

shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The *commissioner of labor and industry, the* state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. *The council shall elect a chairman and vice chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.*

Vacancy.

Commissioner of labor and industry.

Council shall elect chairman and vice chairman.

Term of office.

(b) Subject to the approval of the federal committee on apprenticeship, the apprenticeship council shall: (1) establish standards for apprenticeship agreements in conformity with the provisions of this act; (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this act; and (3) perform such other duties as are hereinafter imposed. Not less than once every two years the apprenticeship council shall make a report through the governor of the state of Montana of its activities and findings to the legislature which shall be made available to the public.

Duties of council.

Report to governor.

(c) The council may accept from the federal government or any agency thereof or from any state agency, any funds made available to carry out purposes within the scope of the activities and purposes of the apprenticeship council and to use such funds as said council may direct, for the purposes for which said funds are made available.

Council may accept funds.

(d) A per diem of fifteen dollars ($15) plus actual and necessary expenses for meals and lodging, such expenses not to exceed that paid other state officials or employees, shall be paid each voting member of the state apprenticeship council, or their authorized representatives, while in official travel status and while attending official meetings for each whole or part of any calendar day. Such voting members, or their representatives, shall be reimbursed a mileage rate and the same is paid other state officials or state employees, for use of person-

Per diem and expenses allowed to members.

Mileage.



HeinOnline -- 1963 vol. I 483 1963

ally-owned vehicles to attend official meetings from any point in the state of Montana to the place of meeting in Montana and return. A maximum of three hundred dollars ($300) shall be the limitation for the combined per diem, expenses and mileage payments as provided for herein, for each voting member of said council, or their representatives, during the twelve (12) consecutive month period of any fiscal year from July first of one year to June thirtieth of the next following year."

Annual maximum allowance.

Commissioner may appoint director and staff.

*(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.*

Director shall serve as secretary.

Amending clause.

Section 2. Section 41-1202, R. C. M. 1947, is amended to read as follows:

Duties of apprenticeship council.

"Section 41-1202. **Duties of state apprenticeship council.** The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Instruction—responsibility.

Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and



HeinOnline -- 1963 vol. I 484 1963

the selection and training of teachers and co-ordinators for such instructions shall be the responsibility of state and local boards responsible for vocational education."

Approved March 5, 1963.

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## CHAPTER 161

An Act Permitting the Creation of Professional Service Corporations, and Amending Sections 15-103 and 15-104, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 15-103, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 15-103. (5902) **Private corporations—how formed.** Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this chapter. *In addition, they may be formed in the manner prescribed in 'The Professional Service Corporation Act'.*" Private corporations—formed by three or more persons or under the professional service corporation act.

Section 2. Section 15-104, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 15-104. (5903) **Purposes for which private corporations may be formed.** The purposes for which the private corporations mentioned in the last section may be formed are: Purposes for which private corporations may be formed.

1. The support of public worship;

2. The support of any religious, benevolent, charitable, educational, or missionary undertaking;

3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music, or other fine art;

4. The encouragement of agriculture and horticulture and the processing and marketing of such products;

5. The maintenance of public parks, and of facilities for skating and other innocent sports;

6. The maintenance of a club for social enjoyment;



HeinOnline -- 1963 vol. I 485 1963

7. The maintenance of a public or private cemetery;

8. The prevention and punishment of theft or willful injuries to property and insurance against such risks;

9. The insurance of human life, dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust;

10. The insurance of human beings against sickness or personal injury;

11. The insurance of the lives of domestic animals or their loss or damage;

12. The insurance of property against marine risks;

13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation;

14. The transaction of any banking business or trust deposit and security business, and the insurance of the safekeeping of all kinds of personal property;

15. The construction and maintenance of a rialroad and of a telegraph line in connection therewith, and a street railroad of any kind;

16. The construction and maintenance of any other species of roads, and of bridges in connection therewith;

17. The construction and maintenance of a bridge;

18. The construction and maintenance of a telegraph line, telephone or electric light line;

19. The establishment and maintenance of a line of stages;

20. The establishment and maintenance of a ferry;

21. The carriage of property and persons by express;

22. The building and navigation of steamboats and carriage of persons and property thereon;

23. The supply of water to the public;

24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means;

25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical, or chemical business;



HeinOnline -- 1963 vol. I 486 1963

26. The transaction of a printing and publishing business;

27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate;

28. The establishment and maintenance of a hotel;

29. The improvement of the breed of domestic animals by importation, sale, or otherwise;

30. The transaction of the business of raising, processing, storing, buying, and selling of all agricultural, horticultural, and other farm products, including grains, fruits, all classes of farm animals and their products;

31. The construction of canals, ditches, flumes, and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells;

32. To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidence of indebtedness created by, any other corporation or corporations wherever organized, with all the rights, powers, and privileges of ownership thereof; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the state of Montana.

*33. The rendering of professional services as defined in the Professional Service Corporation Act.*

No corporation must be formed for any other purpose than those mentioned in this section."

Intent to provide incorporation to render professional services

Section 3. **Legislative Intent.** It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to have obtained other legal authorization.

Title.

Section 4. **Title.** This act may be cited as "The Professional Service Corporation Act."



HeinOnline -- 1963 vol. I 487 1963

Definitions.

Section 5. **Definitions.** As used in this act, the following words shall have the meaning indicated:

"Professional service."

(1) The term "professional service" means any professional service rendered by attorneys, certified public accountants, public accountants, chiropractors, dentists, osteopaths, doctors of medicine, chiropodists, architects, veterinarians, optometrists, and profesional engineers.

"Professional corporation."

(2) The term "professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering professional service, and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

Act does not apply to existing corporations.

Section 6. **Previously Existing Corportions.** This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation and perform personal services to the public by means of a corporation, and this act shall not apply to any corporations organized by such individual or group of individuals prior to the passage of this act; provided, however, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

Amendment of articles.

Purpose of incorporation.

Section 7. **Purpose for Which Incorporated.** An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of the corporation act of Montana for the sole and specific purpose of rendering the same and specific professional service.

Professional services of corporation rendered through duly licensed officers, employees, agents—defined.

Section 8. **How Service Rendered.** No corporation organized and incorporated under this act may render professional services except through its officers, employees and agents who are duly licensed or otherwise



HeinOnline -- 1963 vol. I 488 1963

legally authorized to render such professional services within this state; provided, however, this provision shall not be interpreted to include in the term "employee" as used herein clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

Law or ethics not affected.

Section 9. **Relationship to Person Served.** Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law or professional ethics now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee or a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered, and the corporation shall also be liable for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.

Personal liability.

Corporate liability.

Ultra vires acts prohibited.

Section 10. **Limitation on Other Business.** No corporation organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

Investment.

Property ownership.

Stockholders must be licensed.

Section 11. **Restrictions on Shareholders.** No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than an



HeinOnline -- 1963 vol. I 489 1963

individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated.

No other stock.

No individual shall hold stock or in any way have any interest in more than one (1) corporation organized under this act.

No voting trust agreement.

No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.

Disqualification of stockholder.

Section 12. **Disqualification of Officers, Employees or Shareholders.** If any officer, shareholder, agent or employee of a corporation organized under this act who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, he shall sever all employment with, and financial interests in, such corporation forthwith.

Severance.

Forfeiture of articles.

A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

Dissolution.

Transfer of shares—eligibility.

Section 13. **Transfer of Shares.** No shareholder of a corporation organized under this act may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation, and such sale or transfer may be made only after the same shall have been approved, at a stockholder's meeting, by such proportion, not less than a majority, of the outstanding stock as may be provided in the certificate of incorporation or in the by-laws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose.

Approval.

Restraints on alienation—purchase by corporation.

The articles of incorporation may provide specifically for additional restraints on the alienation of shares, and may require the redemption or purchase of such shares by the corporation at prices and in a manner specifically set forth in such articles, or the articles may specifically authorize the corporation's board of directors or its



HeinOnline -- 1963 vol. I 490 1963

shareholders to adopt by-laws or resolutions restraining the alienation of shares and providing for the purchase or redemption by the corporation of its shares; provided, however, such provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation.

Capital shall not be impaired.

Section 14. **Name.** Every corporation organized under this act and transacting business in this state under a fictitious name or a designation not showing the names of all the shareholders in such corporation, shall file and publish, or cause to be filed and published, the certificates described in sections 63-601, 63-602 and 63-603, R. C. M., 1947. Any such corporation doing business contrary to the provisions of this section shall be subject to the disabilities and provisions of section 63-602, R. C. M., 1947. Every corporation organized under this act is prohibited from advertising the professional services rendered by the members of said corporation.

Certificate of name—filing and publishing.

Disabilities.

Advertising prohibited.

Section 15. **Board of Directors.** The number of shareholder members of the board of directors may be less than the number of shareholders, except that if a corporation has only one (1) shareholder, the board may consist of such shareholder.

Number of directors.

Section 16. **Application of Corporation Law.** Montana statutes shall be applicable to a corporation organized pursuant to this act, except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of such statutes, and in such event the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another domestic professional corporation organized under this act to render the same specific professional service, and a merger or consolidation with any foreign corporation is prohibited.

Application of corporate law.

Merger or consolidation limited.

Section 17. **Annual Report.** The annual report of a professional corporation shall list the names and post office addresses of all shareholders, and shall certify that all shareholders are duly licensed or otherwise

Annual report.



HeinOnline -- 1963 vol. I 491 1963

legally authorized in this state to render the same professional service as the corporation.

Severability.

Section 18. **Severability.** If any provision of this act or the application thereof to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Savings clause.

Section 19. **Savings Clause.** The provision of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities or regulating the several professions enumerated in this act, except insofar as such laws conflict with the provisions of this act.

Approved March 5, 1963.

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## CHAPTER 162

An Act to Amend Section 75-4230, R. C. M. 1947, to Provide That Any Time an Inmate of the Montana Children's Center Attends the Public High School in Twin Bridges, The Latter School Shall Be Reimbursed From the State Public School Equalization Fund at the Rate of Four Hundred Dollars ($400.00).

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-4230, R. C. M. 1947, is amended to read as follows:

Attendance at high school outside county of residence.

Duty of county superintendent to authorize.

"Section 75-4230. **Attendance outside of county of pupil's residence—transfer of apportionment.** The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of an adjoining county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper applica-



HeinOnline -- 1963 vol. I 492 1963

tion has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

Payment.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the county of the student's residence.

Application.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Notification.

Duty of school clerk.

Tuition obligation.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by two hundred fifty dollars ($250.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred twenty-five dollars ($225.00)

High school transfer budget—determination.



HeinOnline -- 1963 vol. I 493 1963

in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred dollars ($200.00) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

Total of transfer budget—separate fund.

The total of the transfer budget shall be subtracted from the receipts from the county ten (10) mill levy for high schools before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

Remittance.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Deposit.

Use.

Reimbursement for inmates of children's center attending public high school.

Whenever pupils are inmates of the Montana *children's center* at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall be reimbursed from the state public school equalization fund at the rate of *four hundred dollars ($400.00)* for each such pupil; provided, however, that this amount of tuition is not considered as a part of state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Reciprocity—waiver of tuition.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and pay-



HeinOnline -- 1963 vol. I 494 1963

ments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis."

Approved March 5, 1963.

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## CHAPTER 163

An Act to Amend Section 93-1904, R. C. M., 1947, Relating to Court Reporters Furnishing Copy from Stenographic Notes; Raising Cost Thereof From Five Cents ($.05) and Seven and One-Half Cents ($.075) Per Folio to Seven and One Half Cents ($.075) Per Folio.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 93-1904, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 93-1904. **To furnish copies to parties, etc.** Each reporter specified in this chapter must likewise, upon request, furnish, with all reasonable diligence, to the defendant in a criminal cause, or a party or his attorney in a civil cause, in which he has attended the trial or hearing, a copy, written out at length or in narrative form, from his stenographic notes, of the testimony and proceedings, or a part thereof, upon the trial or hearing, upon payment by the person requiring the same, the sum of *seven and one-half cents ($.075) per folio.* If the county attorney or attorney-general or judge requires such copy in a criminal cause, the reporter is entitled to his fees therefor; but he must furnish it, and upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge, and must be paid by the county treasurer upon the certificate like other county charges. If the judge requires such a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. If it appears to the judge that a defendant in a criminal case is unable to pay for such

Reporter must furnish copies of transcript.

Charge.

County charge.

No charge.

County charge.



HeinOnline -- 1963 vol. I 495 1963

copy, the same shall be furnished him and paid for by the county."

Approved March 5, 1963.

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## CHAPTER 164

An Act to Amend Section 69-1343, R. C. M. 1947, by Changing the Definition of 'Subdivision' As Used Therein; and Amending Section 69-1345, R. C. M. 1947, to Provide for Changing the Requirements for Construction and Occupancy of Buildings in a 'Subdivision', and to Amend Section 69-1342, R. C. M. 1947, to Provide for Correct Word Usage.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 69-1342, R. C. M. 1947, is amended to read as follows:

Determination that health is endangered by water pollution.

"Section 69-1342. **Declaration of state public policy on subdivisions.** The legislative assembly has determined that the health and safety of Montana citizens are being endangered by drainage from cesspools, septic tanks, privies, water closets, and other sources of polluting mater by liquid raising to the ground surface creating nuisances and seeping into drinking water supplies obtained from wells, springs, streams, lakes and ponds. It is declared the public policy of this state to extend the present laws controlling water supply and sewage disposal to include individual wells that may be *affected* by adjoining sewage disposal and individual sewage systems that may *affect* adjoining wells."

Policy to extend laws to include individual water wells.

Amending clause.

Section 2. Section 69-1343, R. C. M. 1947, is amended to read as follows:

"Subdivision" defined.

"Section 69-1343. "**Subdivision" defined.** The word "subdivision" as used in this act shall mean any tract of land which is hereafter divided into *two (2) or more* parcels, any parcel of which is less than five (5) acres in size, along an existing or proposed street, highway, easement or right of way for sale, rent or lease, as residential lots or residential *or industrial or commercial building* plots which are described by reference to a map or survey of the property or by any other method of description."



HeinOnline -- 1963 vol. I 496 1963

Section 3. Section 69-1345, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 69-1345. **Filing of map or plat subject to sanitary restriction—submission to and approval by board of health—removal or modification of restriction.** (a) Any such subdivision map or plat or revision thereof filed or recorded by the county clerk and recorder in accordance with other provisions of law may be so filed or recorded without regard to the sanitary requirements provided for in this act and its rules and regulation; provided, however, that any such map or plat to be so filed or recorded shall first be subject to a sanitary restriction which must be recorded on or attached to the map or plat by the county clerk and recorder; and no building or shelter, the use of which by persons necessitates supplying water, sewage or waste disposal, shall be erected until such restriction has been removed or modified as provided hereafter. Recording map or plat subject to sanitary restriction. Effect.

(b) Any such subdivision map or plat or revision thereof may be submitted to the state board of health at any time prior to or after its filing with the county clerk and recorder for review and approval by the state board of health for the water and sewage facilities proposed for such subdivision in accordance with the provision of this act and its rules and regulations. Upon approval of the state board of health said board shall provide the county clerk and recorder a record of its approval or any conditions thereof for recording on said map or plat or for attachment thereto. When any subdivision map or plat calls for both a public water and public sewage system and the design and construction of such is not complete a *conditional* approval shall be given and recorded by the state board of health; provided, however, that permanent buildings as described above shall not be *occupied* in such subdivision until such restriction has been removed or modified as provided hereafter. Submission to state board of health. Approval—recording. Conditional approval—incomplete design. Effect.

(c) Any such subdivision map or plat or revision thereof filed by the county clerk and recorder subject to a sanitary restriction shall have such restriction removed or modified with such restriction removal or modification being made and recorded by the county clerk and recorder on or attached to said map or plat Removal of restriction—notice by board.



HeinOnline -- 1963 vol. I 497 1963

upon receipt of state board of health notice that (a) the state board of health approves plans and specifications for a public water facility and a public sewage facility under existing law pertaining to such facilities and such facilities are *under construction* or (b) the subdivision map or plat is approved as provided for under the rules and regulations for subdivisions not providing public water or public sewage systems.''

Approved March 5, 1963.

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## CHAPTER 165

An Act to Amend Section 84-4202, Revised Codes of Montana, 1947, Relating to the Duty of County Treasurers in Collection of Personal Property Taxes Not a Lien on Real Property; Providing That Personal Property in Addition to That Against Which the Tax Is Assessed Is Subject to Levy and Sale; Providing for the Collection of Taxes by the Institution of a Civil Action in Addition to Other Methods; Providing That the County Shall Have a General Lien, Dependent on Possession, Upon Any Monies in Its Possession Belonging to any Taxpayer, for Any Amounts Due Said County for Any Delinquent Personal Property Taxes Not a Lien on Real Estate, of Said Taxpayer; Repealing All Acts or Parts of Acts In Conflict Herewith; Providing An Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 84-4202, R. C. M. 1947, is amended to read as follows:

County treasurer—duty to collect personal property taxes.

''Section 84-4202. The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the assessor's report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his

Duty to levy and sell.



HeinOnline -- 1963 vol. I 498 1963

possession such personal property against which a tax is assessed, *or any other personal property in the hands of the delinquent taxpayer,* and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy, and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

Direction to sheriff.

Fees.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

Liability on bond.

*The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.*

Enforcement of payment.

*The county shall have a general lien, dependent on possession, upon any monies in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lienholder, if any."*

County has lien on moneys.

Notice to lienholder.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Repealing clause.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Effective immediately.

Approved March 5, 1963.



HeinOnline -- 1963 vol. I 499 1963

## CHAPTER 166

An Act to Amend Section 84-3807, Revised Codes of Montana, 1947, Relating to Judgments and Liens for Taxes Against Personal Property; Providing for the Attachment of Tax Liens on Personal Property Acquired by the Tax Debtor After Assessment; Providing the Procedure for Collecting and Enforcing Payment of Property Taxes; Repealing All or Parts of Acts In Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 84-3807, R. C. M. 1947, is amended to read as follows:

Effect of tax and lien.

"Section 84-3807. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property *in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the same to the sheriff. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.* The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

County treasurer may issue execution—sheriff's sale.

Fees.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 5, 1963.

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## CHAPTER 167

An Act to Require a Compulsory Waiting Period Between the Time of Service or Process and the Hearing in a Divorce Action, and for a Stay of Proceedings to Attempt Reconciliation.

*Be it enacted by the Legislative Assembly of the State of Montana:*

No hearing on divorce until 20 days after service of process.

Section 1. No hearing upon grounds for divorce shall be held in any action for divorce from the bonds of



HeinOnline -- 1963 vol. I 500 1963

matrimony or for separate maintenance until at least twenty (20) days after the commencement of the action and service of process. During such period of twenty (20) days or longer, the court, upon application of one of the parties, may require a conference of the parties with a person or persons of their own choosing in order to determine whether or not a reconciliation is practicable.

Court may require conference on reconciliation.

In any action of divorce from the bonds of matrimony or for separate maintenance, where grounds for divorce or separate maintenance have been establishd, if the court finds that attempts at reconciliation are practicable and to the best interests of the family, it shall stay the proceedings for a period not to exceed ninety (90) days where there are minor children in the family.

Court may stay proceedings 90 days where minor children involved.

Approved March 5, 1963.

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## CHAPTER 168

An Act to Provide Rules for the Recognition of Ex Parte Foreign Divorces and Establishing Certain Presumptions as to Domicile.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. An ex parte divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force and effect in this State, if both parties to the marriage were domiciled in this State at the time the proceeding for the divorce was commenced. Proof that a person obtaining an ex parte divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this State within eighteen months after the date of his departure therefrom, or (b) at all times after his departure from this State and until his return maintained a place of residence within this State, shall be prima facie evidence that the person was domiciled in this State when the divorce proceeding was

Ex parte divorce in another jurisdiction void if both parties domiciled in Montana—proof.



HeinOnline -- 1963 vol. I 501 1963

Burden of impeachment—prima facie validity of foreign divorce decrees.

commenced. Otherwise, the burden for impeaching the validity of a foreign divorce decree shall rest upon the assailant and prima facie validity shall be accorded to divorce decrees of sister states.

Approved March 5, 1963.

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## CHAPTER 169

An Act Amending Sections 48-202 and 48-203, R. C. M., 1947, Relating to Annulment of a Marriage; Providing That a Marriage May Be Annulled When a Party Was Under The Age of Majority at Time of Marriage; Establishing the Legitimacy of Children of Annulled Marriages and Providing for Care, Custody and Support of Said Children; Repealing Sections 48-204 and 48-205, R. C. M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana*:

Amending clause.

Section 1. Section 48-203, R. C. M., 1947, is amended as follows:

Time limitations—action to obtain annulment of marriage.

"Section 48-203. **Actions therefor — when and by whom commenced.** An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of *majority* within two years after arriving at the age of *majority;* or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of *majority.*

2. For causes mentioned in subdivision 2: By either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision 3: By the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision 4: By the



HeinOnline -- 1963 vol. I 502 1963

party injured, within two years ofter the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision 5: By the injured party, within two years after the marriage.

6. For causes mentioned in subdivision 6: By the injured party, within four years after the marriage."

Amending clause.

Section 2. Section 48-202, R. C. M., 1947, is amended to read as follows:

Causes for annulling marriages.

"Section 48-202. **Causes for annulling marriages.** A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of *majority,* and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of *majority,* such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable."

Judgment of nullity—legitimacy of issue—jurisdiction of court.

Section 3. *A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the judgment must so specify, and the court may during the pendency of the action, or*



HeinOnline -- 1963 vol. I 503 1963

*at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.*

Repealing clause.

Section 4. Sections 48-204 and 48-205, R. C. M., 1947, are repealed.

Approved March 5, 1963.

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## CHAPTER 170

An Act to Provide for the Transportation of Coal by Pipeline Carrier; Defining Common Carriers of Coal; Providing for the Regulation of Said Carriers by the Board of Railroad Commissioners of Montana; Providing for Hearings Before Said Board of Railroad Commissioners; Providing the Right of Eminent Domain to Construct Necessary Pipelines; Prohibiting Discrimination of Rates and Transportation; and Providing a Penalty for a Violation of the Act, By Amending Sections 8-201, 8-202, 8-204, 8-205, 8-206, 8-207, and 8-210, Revised Codes of Montana, 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 8-201, R. C. M. 1947, is amended to read as follows:

Pipeline owners, operators, managers, declared common carriers.

"Section 8-201. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana, for the transportation of crude petroleum, *coal,* or the products thereof to or for the public for hire, or engaged in the business of transporting crude petroleum, *coal,* or the products thereof by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, *coal,* or the products thereof, to or for the public for hire, and which said pipe line is constructed



HeinOnline -- 1963 vol. I 504 1963

or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, *coal,* or the products thereof, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, *coal,* or the products thereof as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field, *coal mine or field,* or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, *coal,* or the products thereof, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system."

Exceptions.

Section 2. Section 8-202, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 8-202. It is declared that the operation of these pipe lines, to which this act applies, for the transportation of crude petroleum, *coal,* or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, *coal,* or the products thereof, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law;

Operation of piplines for transportation of crude petroleum and coal—affected with public interest.



HeinOnline -- 1963 vol. I 505 1963

Business shall not be conducted unless common carrier—jurisdiction in board of railroad commissioners.

and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, *coal,* or the products thereof, using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum, *coal,* or the products thereof so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy."

Duty of attorney general.

Amending clause.

Section 3. Section 8-204, R. C. M. 1947, is amended to read as follows:

Powers of board to establish rates and regulations.

"Section 8-204. The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, *coal,* or the products thereof by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten (10) days' and not more than thirty (30) days' notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint."

Petition.

Hearing—notice.

Reimbursement.



HeinOnline -- 1963 vol. I 506 1963

Section 4. Section 8-205, R. C. M. 1947, is hereby amended to read as follows: Amending clause.

"Section 8-205. Every common carrier as above defined shall exchange crude petroleum tonnage, *coal tonnage,* or petroleum *or coal* products tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, *coal,* or the products thereof of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum, *coal,* or the products thereof except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, *coal,* or the products thereof tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity."

Exchange of tonnage.

Connections and facilities required—powers of board.

General powers not limited.

Orders of board—prima facie evidence.

Section 5. Section 8-206, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 8-206. Such common carriers of crude petroleum, *coal,* or the products thereof shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Mon- Reports.

Publication of tariffs.



HeinOnline -- 1963 vol. I 507 1963

Investigation.

tana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of

Monthly quantity reports.

Montana shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum, *coal,* or the products thereof owned by such pipe lines and of that held by them in

No publicity.

storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum, *coal,* or the products thereof on hand

Exception.

of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage

Powers of board to hear complaints, to sue.

capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders."

Amending clause.

Section 6. Section 8-207, R. C. M. 1947, is amended to read as follows:

Discrimination forbidden.

"Section 8-207. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum, *coal,* or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, *coal,* or the products thereof produced or purchased by itself

Pipeline considered shipper.

directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum, *coal,* or the products thereof produced or purchased by itself directly or indirectly and handled through its

Uniform charges.

facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous

Exceptions.

service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any



HeinOnline -- 1963 vol. I 508 1963

carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum, *coal,* or the products thereof than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand (3,000) barrels of petroleum or the products thereof in any one day."

Apportioned shipments.

Daily limitation.

Section 7. Section 8-210, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 8-210. Subject to the provisions of this act and the rules and regulations which may be prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum, *or coal,* delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination."

Discrimination forbidden.

Approved March 5, 1963.

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## CHAPTER 171

An Act Amending Section 81-1705, Revised Codes of Montana, 1947, To Allow Semi-Annual Payment of Royalties on State Oil and Gas Leases.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 81-1705, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 81-1705. **Report of lessees.** On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the commissioner of state lands for the preceding calendar month, which report shall be in such form as the state board of land commissioners may prescribe. Such report shall show the amount of oil or gas produced and saved during such preceding month, the price obtained, the total amount of

Monthly report—oil or gas lessee.

Form.

Required information.



HeinOnline -- 1963 vol. I 509 1963

all sales, and such additional information as may be required and shall be signed by the lessee or some responsible person having knowledge thereof, and shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof, *provided, that where the amount of royalty due from any lease is determined by the state board of land commissioners to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semi-annually.*"

Monthly payment of royalty due state.

Board may authorize semi-annual payments.

Approved March 5, 1963.

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## CHAPTER 172

An Act to Amend Section 32-711, R. C. M. 1947, Which Relates to the Control and Management of Bridges by Boards of County Commissioners; to Provide That Boards of County Commissioners May Make Repairs to Stream Beds, Water Courses and the Banks Thereof When There Is Danger That a Bridge May Be Damaged or Lost Because of Erosion or Changes in the Courses of Such Streams.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 32-711, R. C. M. 1947, is amended to read as follows:

County commissioners—control of bridges and contiguous erosion.

"Section 32-711. **Bridges to be under control and management of county commissioners—police regulations.** All bridges referred to in the foregoing sections shall be under the management and control of the board of county commissioners of the county in which such bridge is situated, and all repairs to and planking and replanking, paving, and repaving thereof shall be done as and when directed by the board of county commissioners; *the board of county commissioners may also make repairs to stream beds and water courses and the banks thereof when such a bridge is in danger of being damaged or lost because of erosion to or changes in the beds or banks of such streams;* provided, that such bridges and all persons

Exception—police regulation.



HeinOnline -- 1963 vol. I 510 1963

thereon shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated."

Approved March 5, 1963.

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## CHAPTER 173

An Act to Provide for Reciprocal Agreements with Other States Waiving Citizenship Requirements for Auctioneers and Providing for the Place of Posting Bond by Nonresident Auctioneers.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Reciprocity—citizenship—auctioneer.

Section 1. The citizenship requirements required by the State of Montana for an auctioneer are hereby waived for the citizens of any state or states to the same extent that the home state of the applicant waives such citizenship requirements for the citizens of the State of Montana.

Amending clause.

Section 2. Section 66-204, R. C. M. 1947, is hereby amended to read as follows:

Auctioneer's bond.

"Section 66-204. **The bond—sureties, approval and filing.** The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office*; or if the auctioneer is not a resident of Montana, said bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.*"

Filed with county clerk.

Nonresident auctioneer—bond filed in county of principal business.

Repealing clause.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 5, 1963.

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## CHAPTER 174

An Act to Amend Chapter 32 of Title 94 of the Revised Codes of Montana, 1947, Relating to Crimes Involving Malicious Injuries to Railroads, Highways and Other Property, By Adding Thereto a New Section to Be



HeinOnline -- 1963 vol. I 511 1963

Numbered 94-3211, Making It a Felony for Any Person to Wilfully and Maliciously Displace, Remove, Injure or Destroy any Public Telephone Instrument or Part Thereof or Equipment or Facilities Associated Therewith, or to Enter or Break Into Any Coin Box Associated Therewith; or to Wilfully and Maliciously Cut, Break, Displace, Remove, Injure or Destroy Any Microwave Facilities or Any Telegraph or Telephone Line, Wire, Cable, Pole or Conduit or Electric Power Line, Cable, Pole, Conduit or Facilities Associated Therewith Belonging to Another or the Material or Property Appurtenant Thereto, and Providing a Penalty Therefor, and By Amending Section 94-3203 of the Revised Codes of Montana, 1947, Making It a Misdemeanor to Tamper with Telegraph, Telephone and Electric Systems, By Deleting Therefrom So Much Thereof As Makes It a Misdemeanor for Any Person to Wilfully and Maliciously Displace, Remove, Injure, Destroy or Obstruct Any Telegraph, Telephone or Electric Light Line, Wire, Cable, Pole or Conduit Belonging to Another, or the Material or Property Appurtenant Thereto, and Providing It Shall Be a Misdemeanor to Wilfully or Maliciously Tamper with Electric Power Lines; Repealing Section 94-3209 of the Revised Codes of Montana, 1947, Repealing All Acts and Parts of Acts In Conflict Herewith; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Chapter 32 of Title 94 of the Revised Codes of Montana, 1947, be, and the same is hereby amended by adding thereto a new section to be numbered 94-3211, and reading as follows:

Removal, injury, destruction—telephone, telegraph, electric facilities—penalties.

"Section 94-3211. **Removal, injury or destruction of telephone, telegraph and electric facilities—penalty.** Any person who wilfully and maliciously displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith, or who enters or breaks into any coin box associated therewith, or who wilfully and maliciously cuts, breaks, displaces, removes, injures or destroys any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or an electric power line, cable, transformer, pole or conduit or facilities



HeinOnline -- 1963 vol. I 512 1963

associated therewith belonging to another or the material or property appurtenant thereto is guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000.00) or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment.

Amending clause.

Section 2. That Section 94-3203 of the Revised Codes of Montana, 1947, is amended to read as follows:

Tampering with telegraph, telephone, electric systems—penalties.

"Section 94-3203. **Tampering with telegraph, telephone and electric systems—penalty.** Any person who maliciously and wilfully taps, or makes any connection with any telegraph or telephone line, wire, cable, or instrument, *or electric power line, wire or cable* belonging to another, or maliciously and wilfully reads, takes or copies any messages, communication or report intended for another passing over any such telegraph or telephone line, wire, or cable, in this state, or who wilfully and maliciously prevents, obstructs or delays by any means or contrivance whatsoever the sending, transmission, conveyance or delivery in this state of any message, communication or report by or through any telegraph or telephone line, wire or cable or who uses any apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned, or who aids, agrees with, employs or conspires with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00) or imprisonment in the county jail not exceeding one year, or both, in the discretion of the court. And it shall be unlawful for any person who, for nonpayment of dues, tolls, or other good and sufficient reasons, has been disconnected from service with any telephone, telegraph or electric light or power system in this state to connect or allow himself to be connected with any such company lines without direct and express permission from the official authorized to permit such reconnection. Any person or persons who shall violate or cause to be violated this provision shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one



HeinOnline -- 1963 vol. I 513 1963

hundred dollars ($100.00) or imprisonment in the county jail for ten days, or both, in the discretion of the court."

Repealing clause.

Section 3. Section 94-3209 of the Revised Codes of Montana, 1947, is hereby repealed.

Repealing clause.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 5. This act shall be in full force and effect from and after its passage and approval.

Approved March 5, 1963.

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## CHAPTER 175

An Act to Amend Section 75-1632, R. C. M. 1947, Relating to Duties of School Trustees; to Provide for Accounting and for the Disposition of Rental Funds As to School Owned Employee Housing.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-1632, R. C. M. 1947, is amended to read as follows:

Powers and duties of school board.

"Section 75-1632. **Duties of trustees.** Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

Rules.

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.

Teachers, mechanics, laborers.

2. To employ or discharge teachers, mechanics or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; nor unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.



HeinOnline -- 1963 vol. I 514 1963

3. To determine the rate of tuition of nonresident pupils. Nonresident tuition.

4. To fix the compensation of the clerk. Clerk's salary.

5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study. Enforcement.

6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board. School needs.

7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings, *school owned employee housing* and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district. *Such rentals may be credited to the school housing or rental fund of the district, the general school fund of the district or used to retire outstanding bonds issued by the district. Provided, however, that any expense incurred due to such rentals may be paid out of said rental or housing account, and provided further that any balance in such fund over three thousand dollars ($3,000) at the end of the school year shall be transferred to the general fund.* School buildings including employee housing. Rentals. Deposit. Transfer to general fund.

8. To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; to build, purchase or otherwise acquire schoolhouses, school dormitories and other buildings necessary in the operation of schools of the district, and to sell and dispose of the same; provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three (3) notices in three (3) public places in the district Property.



HeinOnline -- 1963 vol. I 515 1963

at least ten (10) days prior to such election, which notices shall specify the time, place, and purpose of such election. Provided, further, that this subdivision shall not be so construed as to prevent the board of trustees from purchasing one (1) or more options for a school site.

Trust.

9. To hold in trust for their district all real or personal property for the benefit of the school thereof.

Suspension—expulsion.

10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six (6) years of age where the interest of the school requires such exclusion.

Aid to indigent children.

11. To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and when deemed advisable to employ a physician or registered nurse to make inspection into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.

Suitable books.

12. To require pupils to be furnished with suitable books as a condition of membership in school.

Undesirable publications.

13. To exclude from school and school libraries all books, tracts, papers and other publications of immoral and pernicious nature.

Conformance.

14. To require teachers to conform to the law.

Annual report to county superintendent.

15. To make an annual report, as required by law, to the county superintendent on or before the first day of August in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

Report to state superintendent.

16. To make a report directly to the superintendent of public instruction whenever instructed by him to do to.

Additional instruction.

17. To determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent in districts of the third class.



HeinOnline -- 1963 vol. I 516 1963

Visitation and inspection.

18. To visit every school in their district at least once in each term, and to examine carefully into its management, conditions, and needs. The clause applies to each of the trustees.

Separate sanitary facilities.

19. To provide separate privies or outhouses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in a clean condition. Such privies or outhouses must be located and built in such manner as to secure privacy. In all cases where there is no fence dividing the play yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty (20) feet apart, and to require that all janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided, that any trustee or trustees, janitor, or janitors, failing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars ($100.00), or imprisoned in the county jail not exceeding ninety (90) days, or both such fine and imprisonment in the discretion of the court.

Janitors—delinquency—penalty.

Nonresident attendance.

20. To allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room.

American flag.

21. To procure, by purchase or donation, and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every schoolhouse in their respective districts. Said flags shall be of dimensions not less than four (4) by six (6) feet, and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands, and which is not otherwise appropriated, for the purchase and erection of fixtures.

Closing school.

22. To close school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary.

School lunches.

23. To provide foods, cooks, janitor services and equipment for school lunches when deemed advisable by the



HeinOnline -- 1963 vol. I 517 1963

board. Governed by its own judgment, the board may impose a money charge, produce or services from the pupils desiring to and participating in the program of school lunches.

Bookkeeping and auditing.

24. To provide for a system of bookkeeping and annual auditing of extracurricular funds; such bookkeeping system to be recommended by the state examiner and such audit to be made by a qualified accountant or by the state examiner if so requested. If the audit is made by the state examiner, then, there shall upon completion of the audit, be paid a fee of sixty dollars ($60.00) per day per man, into the state treasury, and the state treasurer shall accredit such payment to the special examiner's fund. A certified copy of such audit shall be filed with the county superintendent of schools, and notice of such filing and the availability of the audit to public inspection, shall be published by said superintendent in the next publication of a newspaper published within the district, or, in case there be no paper published within the district, in a newspaper published within the county, if any, and if none within the county then in the nearest newspaper published in an adjoining county and payment of such publication and audit shall be made from the extracurricular funds or from school district funds, as the board of trustees may decide."

State examiner—fee.

Copies of audit.

Publication.

Approved March 5, 1963.

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## CHAPTER 176

An Act to Amend Section 75-1630, R. C. M. 1947, Relating to Transfer of Funds Between School Districts; to Provide That Parents Denied Permission to Have Children Attend Schools Outside District of Residence May Pay The Costs and Have the Children Attend the Other School; and Providing That a Waiver of Costs By a District Receiving Pupils From Other Districts Applies Equally to All Pupils.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-1630, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 518 1963

"Section 75-1630. **Transfer of funds.** Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

Attendance of public elementary schools outside of county of residence.

Permission.

Permission must be granted—

Conditions.

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

Measure of distances.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than



HeinOnline -- 1963 vol. I 519 1963

stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

Rules for determining dispute.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two counties by the county superintendents of such counties, to finally determine the residence of such child.

Tuition rates.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred twenty-five dollars ($225.00); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars ($200.00); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars ($175.00) per pupil.

Duty to include tuition in budget.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trus-



HeinOnline -- 1963 vol. I 520 1963

tees of the district the pupil wishes to attend. *However, nothing in this section shall be so construed as to deny a parent whose children cannot qualify under this section the right to send his children, at his own expense, to a public elementary school of any other district willing to accept them. Such parent must pay to the receiving district, tuition in the amount set forth herein.*

Rights reserved to parent.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; *provided, however, that such waiver must apply equally to all pupils, and* provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

Information for reimbursement.

Included in budget.

Waiver.

Limitations.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

Amount of tuition may be raised without vote.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Determination of eligibility.

Appeal.



HeinOnline -- 1963 vol. I 521 1963

Attendance in adjoining state—waiver of tuition.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.''

Approved March 5, 1963.

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## CHAPTER 177

An Act Authorizing the Optional Use of Trust Indentures as Security Instruments in the Financing of Small Tracts Embracing Three Acres of Land, or less; Providing for the Conveyance of Title to a Trustee to to Secure the Performance of an Obligation and for Re-conveyance Upon Performance; Conferring a Power of Sale Upon the Trustee Under a Trust Indenture and Prescribing the Time and Manner in Which Such Power May Be Exercised; Providing for the Sale of the Property at Trustee's Sale in the Event of Default; Prescribing the Form of Notice of Sale and Providing for the Recordation, Mailing, Posting and Publication of Notice of Sale; Providing for Trustee's Deeds and the Form and Effect Thereof; Providing for the Disposition of the Proceeds of Sale; Disallowing Deficiency Judgment in Certain Cases; Providing for Possession Following Sale; Defining the Fees and Expenses Chargeable to the Grantor of a Trust Deed; Providing for Discontinuance of Foreclosure by Advertisement and Sale; Relating to the Applicability of Mortgage Laws to Trust Indenture Transactions; Amending Sections 93-6005, 93-6006, and 93-6007, R. C. M. 1947, relating to Sales of Real Estate Under Powers of Sale in Mortgages and Rights of Redemption, to Exclude Therefrom Trust Indentures as Defined in This Act;



HeinOnline -- 1963 vol. I 522 1963

and Providing a Short Title, a Severability Clause and an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. **Short title.** This act may be cited as the "Small Tract Financing Act of Montana." Title.

Section 2. **Declaration of policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided. Policy to permit use of trust indentures—home financing. Limit—3 acres.

Section 3. **Definitions.** As used in this act, unless the context requires otherwise: Definitions.

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee. "Beneficiary."

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation. "Grantor."

(3) "Trust Indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary. "Trust indenture."

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest. "Trustee."

(5) "Three Acres" means three acres of land. Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with "Three acres."



HeinOnline -- 1963 vol. I 523 1963

the provisions of this act relative to the power to make a transfer, trust, and power of sale.

Transfers in trust as security.

Section 4. **Authorization of trust indentures.** Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

Unlawful to substitute for existing mortgage.

Power of sale.

Foreclosure.

Qualifications of trustee.

Section 5. **Qualifications of trustee.** (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

Appointment—successor trustee.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the



HeinOnline -- 1963 vol. I 524 1963

time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

Reconveyance upon performance.

Section 6. **Reconveyance upon performance; liability for failure to reconvey.** Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

Failure to reconvey—liability.

Time limitation—foreclosure.

Section 7. **Time within which foreclosure must be commenced.** The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

Foreclosure by advertisement and sale.

Section 8. **Foreclosure by advertisement and sale.** (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

Recording.

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

Default.

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

Notice of sale.

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:



HeinOnline -- 1963 vol. I 525 1963

Names.

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

Description.

(ii) A description of the property covered by the trust indenture;

Mortgage record.

(iii) The book and page of the mortgage records where the trust indenture is recorded;

Default.

(iv) The default for which the foreclosure is made;

Amount owing.

(v) The sum owing on the obligation secured by the trust indenture;

Election to sell.

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

Date of sale.

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 A. M. and 4:00 P. M., Mountain Standard Time;

Place of sale.

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

Manner of sale.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

Notice of sale—mailing, posting, publication.

Section 9. **Notice of sale to be mailed, posted and published.** (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;



HeinOnline -- 1963 vol. I 526 1963

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

Affidavits.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section.

Sale to highest bidder.

Trustee cannot bid.

On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale.

Postponement of sale.

The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

Payment in cash.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall



HeinOnline -- 1963 vol. I 527 1963

Trustee's deed.

execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

Re-sale.

Refusal to pay—liability.

Recital—trustee's deed.

Section 10. **Trustee's deed.** (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

Recording—recitals as prima facie evidence.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of Section 9 of this act, shall be prima facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

Effect of conveyance.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

Purchaser entitled to possession on 10th day.

Seciton 11. **Possession.** The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

Default—right to cure prior to sale.

Section 12. **Discontinuance of foreclosure proceedings when entire amount of default paid.** Whenever all or a



HeinOnline -- 1963 vol. I 528 1963

portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be cancelled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book

Effect of payment of amount in default.

Cancellation of recorded notice of sale.

Liability.

Recording—cancellation.



HeinOnline -- 1963 vol. I 529 1963

and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is cancelled.

Disposition of proceeds.

Section 13. **Disposition of proceeds of sale.** The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

Costs, expenses, fees.

Obligation.

(2) To the obligation secured by the trust indenture;

Surplus.

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

Deficiency judgment prohibited.

Section 14. **Deficiency judgment not allowed.** When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

Recording—request for copy of notice of sale.

Section 15. **Requests for copies of notice of sale.** At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page



HeinOnline -- 1963 vol. I 530 1963

where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

Cross reference.

Effect.

Section 16. **Trustee's fees and attorney's fees.** Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and shall shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of Section 12 of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed $150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

Limitation on fees.

Section 17. **Trust indenture deemed to be mortgage on real property.** A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

Trust indenture deemed mortgage.

Section 18. Section 93-6005, R. C. M. 1947, is amended to read as follows:

Amending clause.

"93-6005. **Sale of real estate under power in mortgage —posting notices.** Hereafter real estate sold under a power of sale given and contained in a mortgage of real estate, *except in a trust indenture as defined in the 'Small Tract Financing Act of Montana'*, shall be advertised for sale at least thirty days before the date fixed for such sale, in a newspaper in the county in which such real

Power of sale in mortgage.

Exception.

Advertisement for sale— publication.



HeinOnline -- 1963 vol. I 531 1963

estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other of said notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the said publication or posting, as hereinbefore provided, notices of such sale must be served personally at least thirty days before the date fixed for such sale upon the occupant of the property so advertised for sale, and upon the mortgagor if within the state of Montana, and upon every person or persons having or claiming an interest of record in the said real estate so advertised for sale who may be found within the said state of Montana."

Posting.

Personal service.

Amending clause.

Section 19. Section 93-6006, R. C. M. 1947, is amended to read as follows:

Redemption.

"93-6006. **Rights of redemption applicable.** All of the rights, powers, and privileges, concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution, shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state *except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the 'Small Tract Financing Act of Montana'.*"

Exception.

Amending clause.

Section 20. Section 93-6007, R. C. M. 1947, is amended to read as follows:

Allowance of attorneys' fees.

"93-6007. **Allowance of attorney's fees—petition and notice.** If the mortgagee shall demand attorney's fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, *except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the 'Small Tract Financing*

Exception.



HeinOnline -- 1963 vol. I 532 1963

*Act of Montana',* he shall petition the district court of the county in which said real estate, or any part thereof, may be situated to fix the amount of such attorney's fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold, or such of them as may be found within the state, which said copy of said petition must be served at least ten days before the day fixed for hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served; such petition shall be acted upon by the said district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given.''

Petition to court to fix.

Service.

Section 21. **Severability clause.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Severability.

Section 22. **Effective date.** This act is effective on its passage and approval.

Effective immediately.

Approved March 5, 1963.

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## CHAPTER 178

An Act to Amend Section 53-122, R. C. M. 1947, Relating to Registration Fees of Motor Vehicles and the Disposition Thereof By Providing for the Division of License or Registration Fees Between The County and Incorporated Cities and Towns Within the County in a Pro Rata Manner; and Restricting the Use of the Monies by Cities, Towns, and Counties.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 53-122, R. C. M. 1947, is amended to read as follows:

Amending clause.

''Section 53-122. **Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles**

Registration—motor vehicles.



HeinOnline -- 1963 vol. I 533 1963

**exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors—providing for transfer of funds from the motor vehicle fund of the registrar of motor vehicles to the motor vehicle recording fund (sometimes called the motor vehicle administrative fund)—providing for deposit of all fees, other than license fees, except dealer license fees, collected by the registrar of motor vehicle, in said motor vehicles recording fund for the payment of expenses of the maintenance and operation of the department of the registrar of motor vehicles.** Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Schedule of fees.

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars ($30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars ($5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars ($2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars ($15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars ($5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars ($10.00);

Electrically driven passenger vehicles, ten dollars ($10.00);

All motorcycles, two dollars ($2.00);

Tractors and/or trucks, ten dollars ($10.00);



HeinOnline -- 1963 vol. I 534 1963

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trialers of all weights, two dollars ($2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars ($5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars ($10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars ($15,00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires;

Bicycles with motor attachment, one dollar ($1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

City road fund.

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city



HeinOnline -- 1963 vol. I 535 1963

of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles, shall be held by the county treasurer and segregated from other county road funds and designated as 'city road fund', to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

Transfer to city treasurer—use.

(b) The license fees held in the city road fund, as hereinbefore provided, at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the 'city road fund', shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than seven hundred and fifty (750) square miles, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of the supervision of the county surveyor

Supervision of construction.

Control.

Limitation—cost of supervision.



HeinOnline -- 1963 vol. I 536 1963

shall not exceed five per cent (5%) of the cost of said work.

Pro rata division—city road fund—county road fund.

*(c) In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a pro rata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns.*

Transfer to city treasurer—use.

*The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said monies in a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town.*

County use.

The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county.

Half-year fee.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one half (1/2) of the regular fee above given.



HeinOnline -- 1963 vol. I 537 1963

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

Transfer of certificate of registration on sale of dealer's business.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar ($1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

Fee.

Transfer to purchaser only.

Exceptions—government vehicles.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

Deposit of fees in motor vehicle recording fund—use.

All fees, other than license fees, mentioned and described in sections 53-110 and 53-112, and in section 53-135, shall hereafter be deposited in, and paid into, the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles.

There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees.



HeinOnline -- 1963 vol. I 538 1963

Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording fund more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county.

Distribution of surplus to counties.

*The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund.''*

County commissioners shall determine miles of public streets and highways beginning in 1964.

Computation—pro rata division—city road fund—county road fund.

Approved March 7, 1963.

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## CHAPTER 179

An Act to Amend Sections 94-301 and 94-304, R. C. M. 1947, to Provide That Wilful Nonsupport or Neglect of a Child or Ward Under Sixteen Years of Age Is a Felony and Prescribing Penalties.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 94-301, R. C. M. 1947, is amended to read as follows:

Amending clause.

''Section 94-301. **Abandonment or failure to support wife—penalty for.** Every person, having sufficient ability to provide for his wife's support, or who is able

Abandonment or failure to support wife—penalty.



HeinOnline -- 1963 vol. I 539 1963

to earn the means for such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless in the judgment of the court or jury he is justified in abandoning her by her misconduct, shall be guilty of a misdemeanor."

Misdemeanor.

Amending clause.

Section 2. Section 94-304, R. C. M. 1947, is amended to read as follows:

Desertion or abandonment of child or ward under sixteen.

"Section 94-304. **Desertion or abandonment of** *child or ward* **a felony—suspension of sentence, when.** *Any person who has a child or ward under the age of sixteen (16) years who is dependent upon him or her for care or support shall not:*

*(1) Desert or abandon such child or ward without providing necesary and proper shelter, food, clothing and medical care for such child or ward; or*

*(2) Wilfully omit, without lawful excuse, to provide necessary and proper shelter, food, clothing and medical care for such child or ward.*

Felony—penalties.

*A person who violates this section is guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than one (1) year nor more than five (5) years in the state prison.*

Suspended sentence—bond.

The court may suspend such sentence if the defendent shall furnish a bond in such penal sum, and with such surety or sureties as the court may fix, conditioned that he will furnish his child or *ward* with necessary and proper shelter, food, care, and clothing. In case of failure to comply with the conditions of such bond, the court may order such person to appear before the court and show cause why sentence should not be imposed, whereupon the court may pass sentence or may modify the order and take a new bond and further suspend sentence as may be just and proper." *The judge may declare a bond forfeited and may, in his discretion, order the face amount of such bond used to support the persons deserted, abondoned or neglected.*

Show cause.

Judge may declare bond forfeited.

Approved March 7, 1963.

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## CHAPTER 180

An Act Amending Section 71-307, R. C. M. 1947, to Re-



HeinOnline -- 1963 vol. I 540 1963

quire the County Department of Public Welfare to Provide Coverage Under the Workmen's Compensation Act for Recipients of General Relief Working for the County; and Providing a Penalty When a Recipient of General Relief Refuses to Perform Work Assigned to Him.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 71-307, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 71-307. **Relief by check or disbursing orders.** Disbursement of relief—warrant, check, or disbursing orders. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. Form. It is further provided, however, that if the county has work available which *a recipient of* general relief is capable of performing, then the county department of public welfare *may* require the *recipient* to perform such work at the prevailing rate of wages *paid by that county for similar work* to be paid from the county poor fund in place of granting him general relief. Recipient may be required to perform work for county—wages paid from county poor fund.

*The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and is authorized to enter into such agreements with the industrial accident board as may be necessary to carry out the provisions of this section.* County department shall provide workmen's compensation.

*Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for a period of one (1) week for each refusal."* Refusal to work—loss of eligibility.

Approved March 7, 1963.



HeinOnline -- 1963 vol. I 541 1963

## CHAPTER 181

An Act to Authorize the Creation and Operation of Cattle Protective Districts Embracing All or Portions of Two or More Counties, Providing for the Appointment of District Cattle Protective Committees, Providing for the Powers, Duties and Financing of Such Cattle Protective Districts.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Cattle protective district—all or parts of two or more counties.

Section 1. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county

Petition.

to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one percent (51%) of the cattle owners owning fifty-five percent (55%) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected.

District formed.

Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

Each county shall have three members on committee.

Section 2. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R. C. M. 1947.

Powers and duties of committees.

Section 3. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, title 46, R. C. M. 1947.

Levy on cattle—collection.

Section 4. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal pro-



HeinOnline -- 1963 vol. I 542 1963

perty, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

Deposit in stockmen's special deputy fund in county treasury.

Section 5. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 1 of this act, a board of county commissioners may remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out.

Petition—withdrawal—discontinuance.

Use of proceeds.

Approved March 7, 1963.

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## CHAPTER 182

An Act to Amend Sections 75-1706 and 75-1723, R. C. M. 1947, By Setting Forth Procedure for Non-Operating School District Budget.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 75-1706, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 75-1706. **Preparation and adoption of preliminary budget.** At the regular meeting of the board of trustees of each school district on the fourth Monday in June such board must consider, prepare and adopt a preliminary budget for the next ensuing school year. Any taxpayer in the district may appear at such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included therein. Such meeting may be continued from day to day, but not exceeding three (3) days in all; provided, that in

School trustees shall adopt preliminary budget.

Hearing.

Continuance.



HeinOnline -- 1963 vol. I 543 1963

first and second class districts such meeting may be continued over a period of not more than five (5) days. When the board has determined the amount necessary to be expended for each item contained in such budget form there shall be entered in column 2 of section I and in column 2 of section II of the budget form the amount proposed to be expended during the ensuing fiscal year for each item contained in such form, and such preliminary budget shall then be signed by a majority of the trustees and the clerk of the district, and the clerk of the district must deliver or transmit such preliminary budget, when so filled in and signed, to the county superintendent of schools on or before the first day of July. If the estimated expenditures set forth in either lines 2 or 4 shall provide for payment of salary or compensation to more than one (1) person, there shall be set forth on a separate sheet but attached to and made a part of such preliminary budget, each position or employment with the salary or compensation to be paid to each person filling the same."

Budget form.

Transmitted to county. superintendent before July 1.

Budget for nonoperating fund.

Items included.

*The elementary school budget for any school district in which no elementary school will be operated in the next ensuing school year shall consist of a single budget for the nonoperating fund, which fund shall incorporate all previously existing funds of the school district. Such budget for the nonoperating fund shall include all budgeted items of the district for the ensuing year, including any tuition payments to be made to the other districts, any transportation obligations, any maintenance of school district property and any other items deemed necessary by the board of trustees of the school district.*

Amending clause.

Section 2. Section 75-1723, R. C. M. 1947, is amended to read as follows:

Duty of county commissioners to levy on school districts.

"Section 75-1723. **Fixing tax levy.** The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board, and it shall be the duty of the county commissioners of each county in the state to fix and levy a tax of five (5) mills on the dollar of the taxable value of all school



HeinOnline -- 1963 vol. I 544 1963

districts within the county, provided that if a levy of less than five (5) mills will be sufficient to meet the approved budget of any school district, then such lesser levy shall be made, but no school district levying less than five (5) mills shall receive any apportionment from the state public school equalization fund.

Less than five mills—no apportionment.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the rate of levy required to produce an amount equal to the foundation program and the additions thereto, within the limitations of thirty per cent (30%), hereinbefore specified, and provided, further, that such last mentioned additional school district tax shall not, in any event, exceed fifteen (15) mills unless the excess above said fifteen (15) mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than fifteen (15) mills is required to reach the thirty per cent (30%) limit above the foundation program, such increase above the fifteen (15) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the thirty per cent (30%) limit above the foundation program."

Duty to levy for final budget including reserve fund.

Limitations—approval by voters.

*To finance the approved nonoperating budget of any school district in which no elementary school will be operated, the county commissioners shall fix and levy a tax for such school district in such number of mills as will produce the amount shown by the approved budget to be raised by tax levy, after deducting from the total amount to be financed the following:*

Levy to finance nonoperating budget.

Deductions.



HeinOnline -- 1963 vol. I 545 1963

Cash balance.

*(1) any net nonoperating fund cash balance; provided, that whenever a nonoperating district did not have a nonoperating fund the preceding year, the net cash balances in all of the regular funds of the district shall be combined to form a single balance which shall be called the nonoperating fund cash balance; provided, further, that any district which operated at least one (1) school in the year immediately preceding the budget year may retain separately any cash balance previously designated as its general fund cash reserve, if in the judgment of the trustees of such district the retention of such general fund cash reserve is essential to the operation of a school anticipated for the year following the budget year, and any such retained cash reserve shall not be deducted from the total amount required for the nonoperating budget;*

Transportation reimbursement.

*(2) the amount of any transportation reimbursement anticipated from the county;*

Anticipated reimbursement.

*(3) the amount of any transportation reimbursement anticipated from the state public school equalization fund; and*

Miscellaneous revenues.

*(4) any miscellaneous revenues available to the district. The remainder of the nonoperating budget amount, after deduction of the above revenues, shall be financed by a tax levied on the taxable valuation of the property of the school district.*

Approved March 7, 1963.

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## CHAPTER 183

An Act to Amend Sections 15-108, 15-201, 15-204, 15-302, and 15-401, Revised Codes of Montana, 1947, to Provide That the Number of Directors of Private Corporations Created Under Chapter 1 of Title 15 of the Revised Codes of Montana 1947, May Be Fixed By By-Laws; Providing for Amendments to the Articles of Incorporation and By-laws so as to Provide That the Number of Directors May Be Fixed By the By-laws; Providing for the Filling of Vacancies in the Office of Director Created By an Increase in the Number of Directors; Repealing All Acts and Parts of Acts In Conflict With



HeinOnline -- 1963 vol. I 546 1963

This Act; and Providing for an Effective Date for This Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 15-108, Revised Codes of Montana, 1947, is amended to read as follows: Amending clause.

"Section 15-108. **Articles of incorporation—what to contain.** Articles of incorporation—recitals.

Articles of incorporation must be prepared, setting forth:

1. The name of the corporation; Name.

2. The purpose for which it is formed; Purpose.

3. The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state; Place.

4. The term for which it is to exist, not exceeding forty (40) years; Term.

5. The number of its directors or trustees, which shall not be less than three (3) and the names and residences of those who are appointed for the first three (3) months, and until their successors are elected and qualified. *Subject to such limitation, the number of directors shall be fixed by the by-laws, and amendments thereto duly adopted by the stockholders or directors. The number of directors may be increased or decreased from time to time by amendment to the by-laws, duly adopted by the stockholders or directors, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a by-law fixing the number of directors, the number shall be the number stated in the articles of incorporation.* Directors or trustees. Number of directors may be fixed in by-laws.

6. The amount of its capital stock, and the number of shares into which it is divided, and if there be more than one (1) class of stock created by the articles of incorporation, a designation of each class, with the amount of stock of each class and the number of shares into which it is divided, and a designation of the voting powers or rights, if any, of any or all classes of stock, with any limitation or restriction thereof, and with either Capital stock. Classes. Voting powers.



HeinOnline -- 1963 vol. I 547 1963

a designation and description of, or a delegation of power to the board of directors of the corporation to designate and describe, the different series, if any, of any class of such stock, the manner of issuing, preferences, limitations, restrictions, and other terms and conditions of or on which each class of said stock, or any series thereof, shall be issued. The articles of incorporation may also contain such provisions as may be desired, limiting or denying to the present or future stockholders of any or all classes of stock any preemptive or preferential right to subscribe to any or all additional issues of stock of the corporation of any or all classes, or bonds, debentures or other obligations convertible into stock, subject to the provisions of the constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings, the articles of incorporation may contain provisions fixing the proportion of each or any class of stock which shall be required to be represented or voted, for specified action, at any such meeting, election or vote, or consent proceeding. The articles of incorporation may also contain provisions for issuing bonds, debentures or other obligations, convertible into stock of any class, in amounts, upon the terms, in the manner and upon the conditions, which shall be provided by resolution of the board of directors. The articles of incorporation may also contain provision making, or delegating power to the board of directors of the corporation to make, the stock of any class or series thereof convertible into stock of any other class or classes or of any other series of the same or any other class or classes, upon such terms and conditions as may be expressed in the articles of incorporation or in a resolution of the board of directors of the corporation, if delegation of power so to do is set forth in the articles of incorporation;

Series.

Right to subscribe.

Subject to law.

Obligations.

Delegation of powers.

Subscription.

7. If there is a capital stock, the amount actually subscribed, and by whom;

Assessment.

8. If the stock is assessable, it must be so stated."

Amending clause.

Section 2. Section 15-201, Revised Codes of Montana, 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 548 1963

"Section 15-201. **Amendment of articles of incorporation—purposes.** Any corporation heretofore or hereafter organized under any of the laws of the state of Montana, may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, *or to provide that the number of directors may be fixed by the by-laws,* by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto."

Amendment of articles.

Section 3. Section 15-204, Revised Codes of Montana, 1947, is amended to read as follows:

Amending clause.

"Section 15-204. **Contents of notice.** Said notice shall state the time and place of said meeting, shall distinctly specify the purpose thereof, and shall specifically state the proposed change of name, if any; the place from which and to which it is proposed to change its principal place of business, if any; the proposed increase or decrease in the number of its trustees or directors, if any, provided, however, that the number thereof shall at no time be less than three; *that it is proposed that the number of directors may be fixed by the by-laws;* the proposed change in the number, par value, character, class or preference of the shares of capital stock, if any; the extent of the proposed increase or decrease of the amount of capital stock, if any; the proposed change or extension of the business of such corporation, if any; the length of the proposed extension of the term of existence of such corporation, if any; and a specific statement of the nature of any other proposed amendment."

Contents of notice of meeting.

Section 4. Section 15-302, Revised Codes of Montana, 1947, is amended to read as follows:

Amending clause.

"Section 15-302. **By-laws—may provide for what.** A

By-laws.



HeinOnline -- 1963 vol. I 549 1963

corporation may, by its by-laws, where no other provision is specially made, provide for:

Meetings. 1. The time, place, and manner of calling and conducting its meetings;

Quorum. 2. The number of stockholders or members constituting a quorum;

Proxy. 3. The mode of voting by proxy;

Directors. 4. *The number of directors and the mode and manner of increasing or decreasing the number of directors;* the time of the annual election of directors, and the mode and manner of giving notice thereof;

Salary and duties. 5. The compensation and duties of officers;

Elections. 6. The manner of election and the tenure of office of all officers other than the directors; and,

Penalties. 7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars ($100) for any one offense."

Amending clause. Section 5. Section 15-401, Revised Codes of Montana, 1947, is amended to read as follows:

Control by board of directors. "Section 15-401. **Corporate powers and business exercised by board of directors—number and membership of board—quorum.** The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three (3) directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three (3) months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. *When a vacancy or vacancies in the office of director is created by virtue of an increase in the number of directors*

Directors must hold stock—exception.

Quorum required.

Vacancy.

Appointment on increase in number.



HeinOnline -- 1963 vol. I 550 1963

*by a by-law adopted by the stockholders or the board of directors such vacancy or vacancies shall be filled by an appointee or appointees of the board of directors and such appointee or appointees shall hold the office of director until the next regular annual election of directors when the office held by such appointee or appointees shall be filled by an election of the stockholders or members as in the case of the election of other directors."* Election.

Section 6. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Section 7. This act shall be in full force and effect from and after its passage and approval. Effective immediately.

Approved March 7, 1963.

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## CHAPTER 184

An Act to Amend Sections 25-301, 25-303 and 25-306, R.C.M. 1947, to Provide for Increases in Fees of Justices of the Peace in Civil Actions; to Provide for Increases in Fees of Justices of the Peace in Criminal Actions; to Provide for Increases in Salaries of Justices of the Peace in Certain Townships; Repealing All Acts and Parts of Acts in Conflict Therewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 25-301, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 25-301. **Fees of justices of the peace in civil actions.** The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court: Justices of the peace—schedule of fees—civil actions.

*Three* dollars and fifty cents ($3.50) when summons is issued, to be paid by the plaintiff.

*Three* dollars and fifty cents ($3.50) when issue is joined, to be paid by the defendant.

*Three* dollars and fifty cents ($3.50) of the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the *three*



HeinOnline -- 1963 vol. I 551 1963

dollars and fifty cents ($3.50) for the issuance of summons shall be made for any services, including issuing and return of execution.

*Three* dollars and fifty cents ($3.50) for all services in an action where judgment is rendered by confession.

*Three* dollars and fifty cents ($3.50) for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

Amending clause.

Section 2. Section 25-303, R. C. M. 1947, is amended to read as follows:

Justices of the peace—schedule of fees—criminal actions.

"Section 25-303. **Fees of justices of the peace in criminal actions.** The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered as a committing magistrate where examination is waived, *three* dollars and fifty cents ($3.50).

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, *seven* ($7) dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, *three* dollars and fifty cents ($3.50).

For all services rendered where there is a plea of guilty, *three* dollars and fifty cents ($3.50).

For all services rendered where there is a trial, *seven* ($7) dollars.

For taking, filing, and approving bail bond, including justification, *two* ($2) dollars.

For transmitting papers on appeal, and certificate, including bond and approval, *three* ($3) dollars.

For all services in issuing a search warrant, to be paid by the person demanding same, *two* ($2) dollars.

Annual limitation.

The total amount of fees allowed by the board of county commissioners to any one justice of the peace in criminal cases must not exceed *seven hundred and fifty dollars ($750)* in any one year."



HeinOnline -- 1963 vol. I 552 1963

Section 3. Section 25-306, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 25-306. **Salaries of justices of the peace in certain townships — hours — quarters.** Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of *three thousand four hundred dollars* ($3,400.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of *three thousand six hundred dollars ($3,600.00)* per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of *four thousand six hundred dollars ($4,600.00)* per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as 'miscellaneous fees' by section 25-304 of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o'clock P.M. to 5 o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury."

Justices of the peace—schedule of salaries—in lieu of fees—based on population.

Exception—miscellaneous fees.

Office hours.

Quarters.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Approved March 7, 1963.



HeinOnline -- 1963 vol. I 553 1963

## CHAPTER 185

An Act to Require a Deposit as Evidence of Good Faith by Bidders on State Land Leases.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Lease bidders for state land—deposit.

Section 1. All persons bidding for the lease of state owned lands shall deposit with the commissioner, as evidence of good faith, a certified check, cashier's check or money order in an amount equal to the annual rental bid in the case of grazing land; and an amount equal to one dollar ($1.00) per acre for each acre of agricultural land contained in the lease, in the case of agricultural land on which such bid is made on a crop share basis.

Deposit applied on rental.

The commissioner shall retain the deposit of the successful bidder to be applied on the rental for the first year of the lease only, and return any balance of the deposit

Return of balance.

at the end of the first year to the successful bidder,

Failure to execute lease—deposit forfeited to federal and private revenue fund.

and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the commissioner to the credit of the proper interest and income account in the federal and private revenue fund.

Approved March 7, 1963.

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## CHAPTER 186

An Act Relating to the Corporation License; Providing for the Determination of Corporation License Tax Liability on Deficiencies and Overpayments; Providing for Periods of Limitation—waiver; Amending Section 84-1504, R. C. M. 1947, to Provide for an Automatic Extension; Amending Section 84-1505, R. C. M. 1947, to Provide for Computation of Tax and Return by the Taxpayer by the Fifteen Day of the Fifth Month Following the Close of the Taxable Period; Providing for a Ten Per Cent (10%) Penalty; Providing Six Per Cent (6%) Per Annum Interest Rate; Amending Section 84-1508, R. C. M. 1947, to Delete the Procedure for Handling Tax Understatements.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. **Determination of tax liability interest on**



HeinOnline -- 1963 vol. I 554 1963

**deficiencies and overpayments.** (a) Deficiency assessments. If, the state board of equalization determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state board of equalization a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state board of equalization shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state board of equalization's action upon the protest is final when it mails notice of its action to the taxpayer.

Notice of additional tax.

Protest.

Hearing.

Notice of action.

When a deficiency is determined and the tax becomes final, the state board of equalization shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state board of equalization of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

Demand for payment.

Interest.

Certificate as evidence.

(b) Overpayment of tax—refunds and credits. If the state board of equalization determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

Credit of overpayment.

Refund.

If the state board of equalization disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of

Notice of disallowance of refund.



HeinOnline -- 1963 vol. I 555 1963

the notice, the state board of equalization's action shall become final, unless within the said thirty (30) days period the taxpayer appeals in writing from the action of said board. If such appeal is made, the state board of equalization shall reconsider its action, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented in the event of an oral hearing, the state board of equalization shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

Appeal.

Hearing.

Notice of determination.

Interest allowed.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar ($1.00).

Exceptions.

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

Time limitation—deficiency assessment.

Section 2. **Periods of limitation—waiver.** (1) Except as otherwise provided in section 84-1513, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on that day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may



HeinOnline -- 1963 vol. I 556 1963

be assessed at any time prior to the expiration of the period agreed upon.

Time limitation—refund of overpayment.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state board of equalization may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

Written extension.

Amending clause.

Section 3. That section 84-1504, R. C. M. 1947, is amended to read as follows:

Computation of license tax. Based on net income—calendar or fiscal year.

"84-1504. **Computation of license tax—return of net income to be filed.** (1) The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31; provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state board of equalization of the day it has thus designated as the close of its fiscal year, at any time not less than thirty (30) days prior to the time its return would be filed if made upon the basis of the calendar year.

Notice of designation.

Return of annual net income.

(2) Every corporation, subject to the license fee herein imposed, shall for each year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, render a true and accurate return of its annual net income in the man-



HeinOnline -- 1963 vol. I 557 1963

ner and form to be prescribed by the state board of equalization, and containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be *signed* by the president, vice-president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the state board of equalization on or before the *fifteenth day of May* in each year, and if reporting on a fiscal year basis the return shall be filed with said board on or before the *fifteenth* day of the fifth month following the close of its fiscal year. *Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the board of equalization shall prescribe. The board of equalization may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.* The term gross income means the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability; but shall include interest exempt from federal income tax. The term 'net income' means the gross income of the corporation less the allowable deductions. However, the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the Federal Internal Revenue Code as now written, or as that section shall be labeled or amended. The term 'fiscal year' means an accounting period of twelve (12) months ending on the last day of any month other than December.

Application for extension—forms.

Extension for good cause.

Gross income defined.

Net income defined.

Fiscal year defined.

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and

Receiver, trustee, or assignee—duty to make return.



HeinOnline -- 1963 vol. I 558 1963

shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders."

Duty to pay assessment.

Section 4. That section 84-1505, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 84-1505. *(1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state board of equalization on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of six per cent (6%) per annum from the due date until paid.*

Taxpayer shall compute tax—remit payment.

Late payment penalty.

Interest added.

(2) **Levy upon and sale of property for payment of corporation licenses taxes.** If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same

Default in payment—levy on property.

Sheriff shall file copy of warrant.

Clerk shall enter judgment.

Lien on title.



HeinOnline -- 1963 vol. I 559 1963

Sheriff shall proceed as on execution.

Fees.

Warrant to authorized agent.

Remedies for deficiency.

manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

Attorney general may bring action.

(3) **Action by attorney general.** Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act."

Amending clause.

Section 5. That section 84-1508, R. C. M. 1947. is amended to read as follows:

Power of board to prescribe forms.

Jurisdiction conferred upon district court of first judicial district

Board may require disclosure.

"Section 84-1508. *Regulations—attendance of witnesses —arbitrary assignment of net income.* The state board of equalization shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process. When the state board of equalization has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing,



HeinOnline -- 1963 vol. I 560 1963

charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the board shall have regard to the fair profits which would normally arise from the conduct of the business."

Effective years.

Section 6. This act shall be in effect for taxable years ending on or after June 30, 1963.

Approved March 7, 1963.

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## CHAPTER 187

An Act Providing for the Destruction of Tax Records.

*Be it enacted by the Legislative Assembly of the State of Montana:*

State board of equalization authorized to destroy tax records more than five years old.

Section 1. Notwithstanding the provisions of any other chapter of this code, the state board of equalization is authorized to destroy tax records more than five (5) years old, as shall be determined to be of no further value.

Repealing clause.

Authorization for destruction of tax records shall be by unanimous vote of the members of the state board of equalization entered upon an authenticated list of records authorized to be destroyed. A copy of the authorization and authenticated list shall be entered in the minutes of the board by its secretary.

Effective immediately.

Section 2. All acts or parts of acts in conflict herewith are hereby repealed.

Section 3. This act is in effect after passage and approval.

Approved March 7, 1963.

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## CHAPTER 188

An Act to Provide That Police Courts, Municipal Courts, Justice Courts and District Courts Shall Have Con-



HeinOnline -- 1963 vol. I 561 1963

current Original Jurisdiction in Proceedings Concerning the Unlawful Operation of Motor Vehicles by Children Under the Age of Eighteen (18) Years; and Providing for Penalties; and Amending Sections 32-21-163 and 32-21-164, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 32-21-163, R. C. M. 1947, is amended to read as follows:

Concurrent jurisdiction—unlawful operation of motor vehicles by children under eighteen.

"Section 32-21-163. **Unlawful operation by child under eighteen**—*concurrent original* **jurisdiction of district court** *and justice court*—**penalties—impounding of vehicle, when.** The district courts *and the justice courts* of the state of Montana *and the municipal and police courts of cities and towns* shall have *concurrent* original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars ($50), *provided such child shall not be imprisoned for failure to pay such fine,* (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine."

Hearing.

Fine.

Imprisonment forbidden.

Revocation or suspension.

Impoundment of vehicle.

Amending clause.

Section 2. Section 32-21-164, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 562 1963

"Section 32-21-164. **Summons—issuing to child under eighteen.** Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court *or a justice court* of the county *or the municipal or police court of the city or town* wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge *or justice of the peace.*"

Summons to child under eighteen.

Delivery of copy to probation officer.

Approved March 7, 1963.

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## CHAPTER 189

An Act to Amend Rule 4, M. R. Civ. P., Relating to Persons Subject to Jurisdiction; Process, Service, Repealing the Following Sections of the Revised Codes of Montana, 1947, Sections 53-204, 93-3004, 93-3009, 93-3010, 93-3019, 93-6206, 93-6207 and 93-6208, and Repealing All Acts and Parts of Acts In Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That rule 4, M. R. Civ. P., be and the same is hereby amended to read as follows:

Amending clause.

"Rule 4, Persons Subject to Jurisdiction; Process, Service.

A. **Definition of Person.** As used in this rule, the word 'person', whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

"Person" defined.

B. (1) **Subject to Jurisdiction.** All persons found within the state of Montana are subject to the jurisdiction

Jurisdiction.



HeinOnline -- 1963 vol. I 563 1963

of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any *claim for relief* arising from the doing personally, through an employee, or through an agent, of any of the following acts:

Claim for relief.

(a) the transaction of any business within this state;

(b) the commission of any act which results in accrual within this state of a tort action;

(c) the ownership, use or possession of any property, or of any interest therein, situated within this state;

(d) contracting to insure any person, property or risk located within this state at the time of contracting;

(e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or

(f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within, this state, or as executor or administrator of any estate within this state.

Acquisition.

(2) **Acquisition of Jurisdiction.** Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

C. **Process.**

Summons—issuance.

(1) **Summons—Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

Form.

(2) **Same—Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the



HeinOnline -- 1963 vol. I 564 1963

name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. *In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: 'This action is brought for the purpose of quieting title to the land situated in County, Montana, and described as follows: (Here insert description of land.).' The provisions of sections 84-4165, R. C. M., and 93-6228, R. C. M., as well as the provisions hereinafter prescribed in D (5) (h), must be complied with.*

Addition—quiet title.

D. **Service.**

Service.

(1) **By Whom Served.** Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of 21 not a party to the action, except that a subpoena may be served as provided in rule 45.

Authorized servers.

(2) **Personal Service Within the State.** The summons and complaint shal be served together, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

Personal service within state.

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

Individual.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or be delivering a copy

Minor over 14.



HeinOnline -- 1963 vol. I 565 1963

of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

Minor under 14.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

Incompetent.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

Domestic corporation or association.

(e) Upon a domestic corporation or upon a partnership or other unincorporated association, by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. If the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the domestic corporation, partnership, or unincorporated association within this state with the person in charge of such office. If the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members, and



HeinOnline -- 1963 vol. I 566 1963

if none such can be found, service may be made upon the secretary of state.

Foreign corporation or association.

(f) Upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the cause of action accrued, (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate, or attorney for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the charter of the foreign corporation, or its right to do business, has expired or been forfeited, by delivering a copy of the summons and complaint to one of the persons who have become trustees for the corporation and its stockholders or members, if such can be found in Montana.

Cities, villages, etc.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

State.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

Personal service outside state.

(3) **Personal Service Outside the State.** Where service upon any person cannot, with due deligence, be made personally within this state, service of summons and complaint may be made by service outside this state



HeinOnline -- 1963 vol. I 567 1963

in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service of summons by publication is permitted as hereinafter provided, personal service of the summons and complaint upon the defendant out of the state, made after the filing of the required complaint and required affidavit for publication, shall be equivalent to, and shall have the same force and effect as, the publication and mailing provided for hereafter in 5 (d) and 5 (e) of this rule.

Publication.

Other service.

*(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6229, 93-6230, and 93-6232, when the action pertains to the provisions of such sections.*

Service by publication.

(5) **Service By Publication—When Permitted; Effect; Manner; Proof.**

(a) **When Permitted.** A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for divorce or for annulment of marriage of a resident of this state or for modifica-



HeinOnline -- 1963 vol. I 568 1963

tion of a decree of divorce granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections 5 (a) (i), 5 (a) (ii), and 5 (a) (iii) herein.

Effect of service by publication.

(b) **Effect of Service by Publication.** When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

Pleading, affidavit.

(c) **Filing of Pleading and Affidavit for Service by Publication;** *and Order for Publication.* Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in 5 (a) above; and (ii) *in situations defined in (5) (a) (i), (5) (a) (ii), (5) (a) (iii),* upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contigent, including any right of dower,



HeinOnline -- 1963 vol. I 569 1963

inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry; *and (iii) in the situation defined in (5) (a) (iv) above, there must first be presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.*

Proof of attachment or garnishment.

Order for service by publication.

Number of publications.

(d) **Number of Publications.** Service of the summons by publication may be made by publishing the same three times, once each week for three successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

Mailing summons and complaint.

(e) **Mailing Summons and Complaint.** A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unkown. If the defendant is a foreign corporation whose charter has not expired or been forfeited, and personal service cannot be effected within Montana under the provisions of this rule, copy of the summons for publication and complaint shall be mailed to (i) the manager of the office of the principal place of business of the corporation, or if none, to one of the officers or directors of such corporation; or (ii) to an agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of said corporation; or (iii) if none of the persons mentioned herein can be found, then to the last known address of the corporation at its principal home office, if known, and also to the secretary of state of the state of its incorporation. If the defendant is a foreign



HeinOnline -- 1963 vol. I 570 1963

corporation whose charter or right to do business has expired or been forfeited, then copy of the summons for publication and complaint shall be mailed to one of the persons who have become trustees for the corporation and its stockholders or members, and, if none can be found, to the last known address of the corporation at its principal home office, if known, and also to the secretary of state of the state of its incorporation.

Time of first publication or service outside state.

(f) **Time When First Publicaiton or Service Outside State Must be Made.** The first publication of the summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any person not served within said 60 day period.

Service complete

*(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.*

Additional information to be published.

(h) **Additional Information to be Published.** In addition to the form of summons prescribed above in 'C. Process, (2) Same—Form', the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

Service on secretary of state.

(6) **Service on Secretary of State.** Unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of the court in which such



HeinOnline -- 1963 vol. I 571 1963

action is pending, accompanied by sufficient copies of such affidavit and of the summons and complaint for service upon the secretary of state, *or whenever service is to be made upon certain corporations as provided in section 93-3008 of these codes, and the requirements of said section 93-3008 have been complied with; and there has also been deposited with the clerk of the court in which such action is pending the sum of five dollars to be paid to the secretary of state as a fee for the receipt of such service; then the* clerk shall forward three copies of the summons, complaint and affidavit, and the fee, to the sheriff of Lewis and Clark County for service on the secretary of state or his deputy by delivering thereto, and the sheriff shall make due return of such service.

Fee.

Effect—Duty to mail notice and copies.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state to the party to be served at his last known address, marked 'Deliver to Addressee Only' and 'Return Receipt Requested', and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee. The date on which the secretary of state receives said return receipt, or advice by the postal authority that delivery of said registered or certified mail was refused, shall be deemed to be the date of service, and the court in which the action is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action. As an alternative to sending the notice and summons and complaint by registered or certified mail, as here provided, the secretary of state may cause notice of the service and a copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D (1), (2) and (3) of this rule.

Affidavit of service and mailing.

The secretary of state shall make an affidavit as to the service on him, and as to his mailing a copy of the summons and complaint and notice of such service, and as to the receipt of the return receipt or advice of the refusal of registered mail, and the respective dates



HeinOnline -- 1963 vol. I 572 1963

thereof, and shall transmit such affidavit to the clerk of the court in which the action is pending, and it shall be filed in the cause. The secretary of state shall keep on file in his office a copy of the summons and complaint, and of his affidavit, and also keep a record which shall show the day and hour and manner of such service.

Court may allow amendment.

(7) **Amendment.** At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Proof of service.

(8) **Proof of Service.** Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the time and place of service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

Affidavit of service—recitals.

(9) **Contents of Affidavit of Service.** Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

Procedure where part of defendants served.

(10) **Procedure Where Only Part of Defendants Are Served.** If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants



HeinOnline -- 1963 vol. I 573 1963

on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered."

Repealing clause.

Section 2. That the following sections of the Revised Codes of Montana, 1947, sections 53-204, 93-3004, 93-3009, 93-3010, 93-3019, 93-6206, 93-6207 and 93-6208, and all acts and parts of acts in conflict herewith, are hereby repealed.

Approved March 7, 1963.

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## CHAPTER 190

An Act to Amend Sections 81, 82, and 83 of Chapter 13, Session Laws of Montana for 1961, By Striking From Section 81, Table A, The Language 'Quiet Title (Including Actions to Establish Title to Property Granted to Heirs of Deceased Entrymen) - Sections 93-6201 to 93-6239,' and Substituting Therefor the Language 'Actions to Establish Title to Property Granted to Heirs Of Deceased's Entrymen - Sections 93-6225 to 93-6239'; To Amend Section 82, Chapter 13, Session Laws of 1961 By Adding to Table B In the List of Statutes Superseded By Rule 4 the Following Sections: 53-204, 93-3004, 93-3009; 93-3010; 93-3019; 93-6206; 93-6207; and 93-6208; By Amending Section 83 of Chapter 13 of the Session Laws of 1961, Table C, By Adding to the List of Statutes Superseded By the Rules Sections 53-204, Rule 4; 93-3004, Rule 4; 93-3009, Rule 4; 93-3010, Rule 4; 93-3019, Rule 4; 93-6206, Rule 4; 93-6207, Rule 4; 93-6208, Rule 4.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 81, chapter 13, laws of 1961, being table A of M. R. Civ. P., is amended by striking from



HeinOnline -- 1963 vol. I 574 1963

table A the language "Quiet title (including actions to establish title to property granted to heirs of deceased entrymen) - 93-6201 to 93-6239" and substituting therefor the language "Actions to establish title to property granted to heirs of deceased's entrymen - 93-6225 to 93-6239."

Section 2. Section 82, chapter 13, laws of 1961, being table B of M. R. Civ. P., is amended by adding to the list of statutes superseded by rule 4 the following sections: 53-204, 93-3004, 93-3009; 93-3010; 93-3019; 93-6206; 93-6207, 93-6208. Amending clause.

Section 3. Section 83, chapter 13, laws of 1961, being table C of M. R. Civ. P., is amended by adding to the list of statutes superseded by the rules the following. Amending clause.

| | |
|---|---|
| 53-204 | 4 |
| 93-3004 | 4 |
| 93-3009 | 4 |
| 93-3010 | 4 |
| 93-3019 | 4 |
| 93-6206 | 4 |
| 93-6207 | 4 |
| 93-6208 | 4 |

Approved March 7, 1963.

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## CHAPTER NO. 191

An Act Defining 'Subdivision' and 'Subdivided Lands'; Providing for the Regulation, Supervision and Control of Subdivisions by the State Real Estate Commissioner and Defining His Duties and Powers Relative Thereto; and Providing a Penalty for the Violation of This Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The word "subdivision" and "subdivided lands" as used in this act shall mean any tract of land which is hereafter divided into five (5) or more parcels, any parcel of which is less than five (5) acres in size, "Subdivision," "subdivided lands," defined.



HeinOnline -- 1963 vol. I 575 1963

and which is offered for sale or lease outside the state of Montana.

State real estate commissioner may make rules.

Section 2. The state real estate commissioner hereafter referred to as the "Commissioner" may make and adopt such rules and regulations as are reasonably necessary for the enforcement of this act.

Offer outside state—notice of intention to sell or lease.

Section 3. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the state real estate commissioner in writing of his intention to sell or lease such offering.

Required information.

The notice of intention shall contain the following information.

(a) The name and address of the owner.

(b) The name and address of the subdivider.

(c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.

(d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.

(f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

(g) Copies of any and all advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the said property, or an interest therein, when said material is or might be circulated outside of this state.

(h) Such other information as the owner, his agent or subdivider, may desire to present.

Fee.

Section 4. A filing fee of fifty dollars ($50) shall



HeinOnline -- 1963 vol. I 576 1963

accompany the notice of intention provided for in section 3 of this act.

Commissioner may require additional information.

Section 5. After receiving the notice of intention, the commissioner may require such additional information concerning the project as he deems necessary, for which purpose he may prepare a questionnaire for the owner, his agent or subdivider, to answer.

Fee.

Deposit in funds—use.

Section 6. The questionnaire as provided for in section 5 of this act shall be accompanied by a filing fee of one hundred dollars ($100). All fees and charges provided for by this Act shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in the administration of this act when such claims have been approved as provided by law.

Commissioner may investigate subdivision

Section 7. The state real estate commissioner may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of such investigation, the commissioner may:

1. Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

2. Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

3. Require evidence of compliance with the requirements of appropriate authorities.

4. Require an inspection of the subdivision to be made.

Unlawful use.

Section 8. It shall be unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the commissioner as provided for in this act.



HeinOnline -- 1963 vol. I 577 1963

Blanket encumbrance defined.

Section 9. For the purpose of this act, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

Unlawful to sell or lease without compliance—conditions.

Section 10. It shall be unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

Escrow.

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the state real estate commissioner until: 1. The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or: 3. Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the monies shall be paid to the party who is not in default and is entitled thereto.

Title held in trust

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

Bond.

(c) A bond in the amount of twenty-five hundred dollars ($2,500) to the state of Montana is furnished to the state real estate commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, who shall provide for the return of monies paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled



HeinOnline -- 1963 vol. I 578 1963

to the return of such monies, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such monies to which such purchaser or lessee is not entitled.

Sales contract—recitals.

Section 11. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this act, shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

Notice to commissioner.

Section 12. When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased or sold to another, or, when an interest therein is acquired by one owner, lessee or optionee, the state real estate commissioner shall be notified by the parties to the transaction.

Records subject to inspection.

Section 13. Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the state real estate commissioner and the commisisoner shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

Commissioner may prohibit sale or lease.

Section 14. Whenever in the opinion of the state real estate commissioner any person has or is violating, or is about to violate, any of the provisions of this act, the commissioner may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the commissioner may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the commissioner is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

Time limitation.

Hearing.

The hearing upon the cease, desist and refrain order shall be held in the same manner and under the same requirements and conditions as is provided in section 66-1917, Revised Codes of Montana, 1947.



HeinOnline -- 1963 vol. I 579 1963

Accrual of cause of action.

Section 15. For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

Violations—misdemeanors.

This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

Section 16. The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the state real estate commissioner.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner or subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act.

(d) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

Repealing clause.

Section 17. All acts and parts of acts in conflict herewith are hereby repealed.

Severability.

Section 18. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.



HeinOnline -- 1963 vol. I 580 1963

Section 19. This act shall take effect immediately upon its passage and approval. Effective immediately.

Approved March 7, 1963.

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## CHAPTER NO. 192

An Act to Amend Initiative Measure No. 54 Adopted by the Vote of the Legal Electors of the State of Montana at the Regular General Election Held in the State of Montana on November 7, 1950, as Amended by Chapter 44, Session Laws of 1957, Relating to Section 10 Thereof, by Providing a New Date for the Submission of Applications for Payment of the Korean War Honorarium to be January 1, 1964; Repealing All Acts and Parts of Acts in Conflict Herewith; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 10, Chapter 44, Laws of 1957, is amende dto read as follows: Amending clause.

"Section 10. Claims for benefits under the provisions of subdivisions (b), (c) and (d) of Section 2, and/or under Sections 3 and 5 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of *six (6)* years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of *six (6)* years shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administraton of this act shall be suspended, by reason of litigation or from any other cause." Claim for benefits—time for filing.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Section 3. This act shall be in full force and effect upon its passage and aproval. Effective immediately.

Approved March 7, 1963.

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## CHAPTER NO. 193

An Act to Amend Section 45-1003, R. C. M. 1947, Relating to Laborers' and Materialmen's Liens on Oil and



HeinOnline -- 1963 vol. I 581 1963

Gas Wells, Leaseholds and Pipelines, to Provide the Same Shall Arise, be Perfected, and Have the Same Priority as Materialmen's and Mechanics' Liens; and Repealing Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 45-1003, R. C. M. 1947, is amended to read as follows:

Lien procedure.

"45-1003. **Manner of enforcing liens—duty of county clerks.** The liens herein created shall *arise, be perfected, have the same priority and* be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens, *with the following exceptions:*

Duty of county clerk.

Exceptions.

Filing.

*(1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated.*

Time limitation.

*(2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract."*

Repealing clause.

Section 2. Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed.

Approved March 7, 1963.

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## CHAPTER NO. 194

An Act to Amend Section 16-1907, R. C. M. 1947, Relating to Emergency Budgets for Counties, to Provide That Emergency Budgets for Counties of the First, Second, Third and Fourth Class Shall Not Exceed Two Hundred Thousand Dollars ($200,000) for the Period Ending July 1, 1963; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 16-1907, R. C. M. 1947, is amended to read as follows:

Emergency expenditures.

"16-1907. **Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hear-**



HeinOnline -- 1963 vol. I 582 1963

**ing dispensed with in extreme cases—emergency warrants —tax levy—lapse of appropriations.** (1) In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the county, and if there be none then in a newspaper of general circulation in the county.

County commissioners shall adopt. resolution.

Publication—notice of public hearing.

(2) Upon the conclusion of such hearing, if the commissioners shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject however, to the following limitations: No expenditures shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said county feeling aggrieved by said order may appeal therefrom to the district court for such county by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the county clerk and recorder of said county as the clerk of the board of county commissioners. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any lia-

Commissioners may make order.

Limitation.

Appeal.

Petition.



HeinOnline -- 1963 vol. I 583 1963

bility thereunder, until final determination of the matter by the court.

Hearing de novo.

(3) Upon the filing of such petition the court shall imediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter do novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

Limitation on amount.

(4) The total of all emergency budgets, and appropriations made therein, in any one year, to be paid from the county poor fund shall not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy, as shown by the last completed assessment roll of the county.

Occurrence of certain emergencies.

(5) Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condtion of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, and enterng the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing; provided, that the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot or insurrection, shall not exceed the sum of *two hundred thousand dollars ($200,000.-*

Commissioners may adopt resolution— expenditures without notice or hearing.



HeinOnline -- 1963 vol. I 584 1963

*00)* in counties of classifications 1, 2, 3 and 4, *provided, however, that after July 1, 1963, such emergency expenditures shall not exceed twenty-five thousand dollars ($25,000.00);* fifteen thousand dollars ($15,000.00) in counties of classifications 5 and 6, and seven thousand five hundred dollars ($7,500.00) in counties of classification 7 unless the excess above said sum shall first have been authorized by a majority of the taxpaying freeholders of such county, who are registered electors therein, voting at a general or special election. The question of authorizing such excess expenditure shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Limitations on amount—excess submitted to voters.

Form of ballot.

Shall the board of county commissioners of ..... County, Montana be authorzed to make additional expenditures and incur additional liabilities in the amount of $..... over and above the sum of....., to meet an emergency caused by .....

☐ Yes

☐ No

Notice of such election shall be given by posting notice thereof at least fifteen (15) days before such election in three (3) public places in each voting precinct within the county and by publishing such notice for not less than ten (10) days before the date of such election.

Notice of election.

(6) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants then such warrants shall be registered, bear interest and be called in for payment in the manner provided by law for other county warrants.

Emergency warrants.

(7) The county clerk and recorder shall include in his annual tabulation to be submtted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year, and the county commissioners shall include in their tax levies a levy for

Annual tabulation and levy.



HeinOnline -- 1963 vol. I 585 1963

each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emergency warrants at any election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

Appropriation accounts.

(8) All appropriations, other than appropriations for incompleted improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty (30) days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations except as hereinbefore provided, regarding incompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.''

Effective immediately

Section 2. This act shall be in full force and effect from and after its approval.

Approved March 7, 1963.

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## CHAPTER NO. 195

An Act Relating to the Nursing Practice Act, Increasing Fees for License and Renewal of License for Professional Registered Nurses and Licensed Practical Nurses; Amending Sections 66-1228, 66-1234, and 66-1236, R. C. M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 66-1228, R. C. M., 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 586 1963

"66-1228. **License—by examination—by endorsement without examination—license fees.** (1) By examination. The applicant for license to practice professional nursing shall be required to pass a written examination in such subjects as the board, acting under the professional nursing administration, may determine. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five ($25.00) dollars at the time the application is submitted, which fee shall be returned to the applicant, if the application is withdrawn not later than five (5) days prior to the date of examination, or if the examination is not taken, subject to deduction by the board of one dollar ($1.00) per subject of the examination which shall be retained by the board.

Examination to practice professional nursing.

License.

Fee.

(2) By endorsement without examination. (a) The board, acting under the professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of *twenty-five dollars ($25.00)* at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars ($5.00), to be retained by the board.

Board may issue license without examination.

Fee.

(b) An applicant may, pending application for a professional nursing license pursuant to paragraph (a) immediately preceding practice professional nursing as an employee of a physician in her capacity as professional nurse or in a hospital or public health agency for a period not longer than six (6) months from the date the board acknowledges receiving from such nurse a duly completed statement, on a form provided by the board, of intention so to practice. Such statement shall consist of (1) an affidavit by such nurse and (2) an affidavit by the physician employer or by the administrator, assistant ad-

Notice of intention to practice.

Affidavits.



HeinOnline -- 1963 vol. I 587 1963

ministrator, or director of nursing of a hospital or public health agency where such nurse intends to practice professional nursing. The affidavit of such nurse and the affidavit of such physician employer or administrator, assistant administrator or director of nursing of such hospital or public health agency shall contain the information deemed by the board to be necessary for such statement. This paragraph shall not be construed to permit such nurse to practice for more than said six (6) months period, or, in any event, after being notified by the board that application for a license has been denied, or in all cases, after being notified by the board to cease and desist such practice; notice in all cases shall be given by registered mail to the address of applicant as the same appears in the statement of applicant."

Amending clause.

Section 2. Section 66-1234, R. C. M., 1947, is amended to read as follows:

License to practice as practical nurse—fee.

"66-1234. **Fee.** The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of *twenty-five dollars ($25.00)* to the board at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to *the* date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars ($5.00) to be retained by the board."

Amending clause.

Section 3. Section 66-1236, R. C. M., 1947, is amended to read as follows:

Annual renewal.

"66-1236. **Renewal of license.** The license of every person licensed under the provisions of the act, either as a registered nurse, or a licensed practical nurse, must be annually renewed, except as hereinafter provided. On or before December first of each year, the board shall mail an application form for renewal of license to every person to whom a license was issued or renewed during such year. The applicant shall carefully complete and subscribe the application form and return it to the board with a renewal fee of *five dollars ($5.00)* before January first, next. Upon receipt of the application and fee the board shall verify the accuracy of the application against its record, and from such other sources as it deems reliable, and issue to the applicant a certificate of renewal for the current year beginning January first and expiring Decem-

Fee.



HeinOnline -- 1963 vol. I 588 1963

ber thirty-first, following. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated in the certificate of renewal.

Lapse—reinstatement.

Any licensee who allows her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such a failure to renew license and on payment of the current renewal fee prescribed by the board.

Violation—penalty.

Any person practicing nursing during any time following the date her license has expired by lapse of time shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this act."

Approved March 7, 1963.

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## CHAPTER NO. 196

An Act to Amend Articles VI and XI of Section 89-3201, R. C. M. 1947, Relating to the Columbia Interstate Compact.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Article VI of the Columbia Interstate Compact, codified as Article VI, Section 89-3201, R. C. M. 1947, is amended to read as follows:

*"ARTICLE VI—COOPERATION IN POWER DEVELOPMENT*

Cooperation of member states—Columbia interstate compact.

*The best interests of the region will be served by the cooperation of the member states in securing the development and construction of power projects in sufficient number and with sufficient capacity to meet the present and future energy requirements of the region, but no recommendation shall be made by the Commission with respect to power allocations except by unanimous affirmative vote of all member states, anything in Article III notwithstanding; provided, however, that any member state shall have the right acting independently through its officers or agencies to secure in connection with any project located wholly or partly within such state, such protections and reservations of power as such state may consider necessary to safeguard its present or future interests or power requirements."*

Rights of member state—reservation of power.



HeinOnline -- 1963 vol. I 589 1963

Amending clause.

Section 2. Article XI of the Columbia Interstate Compact, codified as Article XI, Section 89-3201, R. C. M. 1947, is amended to read as follows:

"ARTICLE XI—EXISTING RIGHTS RECOGNIZED

Existing rights not affected.

Nothing in this compact shall be deemed:

(1) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over and to the waters of the Columbia river basin, except as otherwise provided by the federal legislation required for the implementation of this compact.

(2) To affect the obligation of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

(3) To impair or affect the capacity of the United States, or those acting by or under its authority, to acquire in accordance with the laws of the state involved rights in and to use of waters of the Columbia river basin.

(4) To subject any property of the United States, its agencies or instrumentalities, to taxation by any member state or subdivision thereof.

(5) To subject any property of the United States, its agencies or instrumentalities, to the laws of any member state to any extent other than the extent those laws would apply without regard to this compact, except as otherwise provided by the federal legislation required for the implementation of this compact.

(6) To affect the applicability of the laws of any member state with respect to water rights properly claimed thereunder, except to the extent that the applicability in a given case would be inconsistent with the provisions of this compact.

(7) To affect adversely the areas of Mount Rainier, Glacier, Yellowstone, or Grand Teton National Parks or Craters of the Moon, Fort Vancouver or Whitman National Monuments or to limit the operation of laws relating to the preservation thereof.

*(8) To impair or affect marketing provisions for*



HeinOnline -- 1963 vol. I 590 1963

*federally generated power as the same may be now or hereafter established.''*

Approved March 7, 1963.

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## CHAPTER NO. 197

An Act Providing That Information and Data Concerning Infant Morbidity and Mortality May be Provided to the State Board of Health, The Montana Medical Association and Any of Its Allied Medical Societies, Any Committees of Nationally Organized Medical Societies or Research Groups, or Any In-Hospital Staff Committee, for the Purpose of Reducing Infant Morbidity and Mortality Through Study and Medical Research; Providing That No Liability Shall Arise By Reason of Having Furnished Any Such Information or Data, or By Reason of Having Released or Published the Findings and Conclusions of Such Groups to Advance Medical Research and Education, or by Reason of Having Released or Published Generally a Summary of Such Studies; Providing That the Identity of Any Person Whose Condition or Treatment Is the Subject of Any Information or Data Provided Under the Terms of This Act Shall Not Be Revealed Under Any Circumstances; And Providing That the Information and Data Received Under the Terms of This Act and the Conclusions Resulting From Studies Conducted Under the Terms of This Act Shall Be Privileged Communications.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Information on infant mortality or morbidity may be furnished.

Section 1. **Information on infant mortality or morbidity may be furnished.** Any person, hospital, sanitorium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the state board of health, the Montana medical association, any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee, to be used in the course of any study for the purpose of reducing infant morbidity or mortality, and no liability of any kind or character for damages or other

Use.

Non-liability.



HeinOnline -- 1963 vol. I 591 1963

relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

Use for medical research—identity confidential.

Section 2. **Information to be used only for medical research—Identity of persons treated not to be revealed.** The state board of health, the Montana medical association, any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing infant morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

Information deemed privileged communication.

Section 3. **Information furnished deemed privileged communication.** All information, interviews, reports, statements, memoranda, or other data furnished by reason of this act and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceedng of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions or any part thereof, unless waived by the person treated or his legal representative, shall constitute prejudicial error resulting in a mistrial in any such proceeding.

Effect of unauthorized use.

Approved March 7, 1963.

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## CHAPTER NO. 198

An Act to Permit Reception of Nonresident Insane to to State Hospital Pending Return to State of Residence



HeinOnline -- 1963 vol. I 592 1963

and Repealing Section 38-118, Revised Codes of Montana, 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Nonresident insane—stay in state hospital.

Section 1. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

Repealing clause.

Section 2. Section 38-118, R. C. M. 1947, is hereby repealed.

Approved March 7, 1963.

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## CHAPTER NO. 199

An Act Amending Section 84-4903, R. C. M. 1947, Relating to Personal Income Tax, Deleting the Provision As to Taxability of Nonresident Officers of Corporations; Amending Section 84-4910, R. C. M. 1947, to Provide for an Additional Exemption to Income Tax Only In the Event a Separate Return Is Made By Taxpayer and Spouse Has No Gross Income and Is Not the Dependent of Another Taxpayer; Amending Section 84-4956, R. C. M. 1947, to Provide for Examination of Income Tax Returns, Hearings and Return of Overpayments at Six Per Cent (6%)Per Annum Under Certain Conditions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 84-4903, R. C. M. 1947, is amended to read as follows:

Income tax—nonresident.

"84-4903. **Tax on nonresident.** (a) A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state."

Amending clause.

Section 2. That Section 84-4910, R. C. M. 1947, is amended to read as follows:

Individual exemptions.

"84-4910. **Exemptions.** (a) Allowance of Personal Exemption. In the case of an individual, the exemptions



HeinOnline -- 1963 vol. I 593 1963

provided by this section shall be allowed as deductions in computing taxable income.

Taxpayer and spouse.

(b) Taxpayer and Spouse. An exemption of six hundred dollars ($600.00) for the taxpayer; and an additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer *if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.*

Aged 65 or more.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer *if a separate return is made by the taxpayer, and* if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, *has no gross income and* is not the dependent of another taxpayer.

Blindness.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer *if a separate return is made by the taxpayer and* if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, *has no gross income and* is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that



HeinOnline -- 1963 vol. I 594 1963

the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars ($600.00) for each dependent: Dependents.

(A) Whose gross income for the calendar year in which the taxable year of the taxapayer begins is less than six hundred dollars ($600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) years at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term 'child' means an individual who is a son, stepson, daughter or stepdaughter of the taxpayer. "Child" defined.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term 'student' means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins "Student" defined.

(A) Is a full time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar "Dependent" defined.



HeinOnline -- 1963 vol. I 595 1963

year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or

(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section

"Brother," "sister," defined.

(1) the terms "brother" and "sister" include a brother or sister by the halfblood.

Adopted child.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.



HeinOnline -- 1963 vol. I 596 1963

(h) Determination of Marital Status. For purposes of this part Marital status.

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption *deduction* in the case of a nonresident taxpayer Proration of deduction—nonresident

(1) The exemption *deduction* shall be prorated *according to* the ratio the *taxpayer's* Montana adjusted gross income bears to *his* federal adjusted gross income."

Section 3. That Section 84-4956, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 84-4956. **Credits and refunds.** *If the board of equalization discovers from the examination of a return or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.* Overpayment—refund.

*Effective with taxable years ending on or after December 31, 1959,* no such credit or refund shall be allowed or made after *five (5)* years from the *date prescribed by statute for filing the return,* unless before the expiration of such period a claim therefor is filed by the taxpayer, *or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof.* Within six (6) months after *a* claim for refund is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall Limitation. Disallowance of claim—hearing.



HeinOnline -- 1963 vol. I 597 1963

grant a hearing thereon *upon proper application by the taxpayer.* If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

Interest.

*Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which*

Election.

*the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the*

Exceptions.

*overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar ($1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable."*

Approved March 7, 1963.

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## CHAPTER NO. 200

An Act Abolishing the Actions for Breach of Promise of Marriage and for Alienation of Affections and Repealing Section 17-319, R. C. M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Actions for alienation of affections abolished.

Section 1. All civil causes of action for alienation of affections of husband or wife are hereby abolished; pro-



HeinOnline -- 1963 vol. I 598 1963

vided, however, that this section shall not apply to causes of action which have heretofore accrued.

Actions for breach of contract to marry abolished—Exceptions—fraud and deceit—unjust enrichment.

Section 2. All causes of action for breach of contract to marry are hereby abolished; provided, however, that where a plaintiff has suffered actual damage due to fraud or deceit or a defendant has been unjustly enriched, the plaintiff may maintain an action for fraud or deceit or unjust enrichment and recover therein only the actual damage proved or for the benefit wrongfully obtained or restitution of property wrongfully withheld, where such action otherwise is maintainable under existing law.

No act done in state shall give rise to abolished actions.

Section 3. No act hereafter done within this State shall operate to give rise, either within or without this State, to any of the causes of action abolished by this Act. No contract to marry, which shall hereafter be made within this State, shall operate to give rise, either within or without this State, to any cause of action for breach thereof. It is the intention of this Act to fix the effect, status, and character of such acts and contracts, and to render them ineffective to support or give rise to any such causes of action, within or without this State.

Unlawful to file pleading.

Section 4. It shall hereafter be unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court in this State, any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this Act, whether such cause of action arose within or without this State.

Contracts of settlement declared void.

Section 5. All contracts and instruments of every kind which may hereafter be executed within this State in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this Act, whether such claim or cause of action arose within or without this State, are hereby declared to be contrary to the public policy of this State and absolutely void. It shall be unlawful to cause, induce or procure any person to execute such a contract or instrument, or cause, induce or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action, or to receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement

Unlawful to procure execution



HeinOnline -- 1963 vol. I 599 1963

Unlawful to commence action.

or compromise. It shall also be unlawful to commence or cause to be commenced, either as litigant or attorney in any court of this State, any proceeding or action seeking to enforce or recover upon any such contract or instrument, knowing it to be such, whether the same shall have been executed within or without this State; provided, however, that this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this Act, or any contracts or instruments heretofore executed, or to the bona fide holder in due course of any negotiable instrument which may be executed hereafter.

Misdemeanor—penalties.

Section 6. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction therefor shall be punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment for a term of not less than one year nor more than five years, in the discretion of the court.

Repealing clause.

Section 7. Section 17-319, R. C. M. 1947, is repealed.

Approved March 7, 1963.

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## CHAPTER 201

An Act Amending Section 84-4914, R. C. M. 1947, Relating to Personal Income Tax, To Require the Filing of Income Tax Returns Upon Certain Conditions and to Provide for the Election of Filing Joint Returns and Amending the Procedure for Filing Returns; Amending Section 84-4922, R.C.M. 1947, to Provide That Revision on Income Tax Returns May Be Made Within Five (5) Years From Due Date; Amending Section 84-4924, R. C. M. 1947, to Provide for a Six Per Cent (6%) Per Annum Interest Rate on Unpaid Income Taxes and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 84-4914, R. C. M. 1947, is amended to read as follows:

"Section 84-4914. **Returns and payment of tax —**



HeinOnline -- 1963 vol. I 600 1963

**penalty and interest — refunds — credits.** (1) *Every single individual and every married individual filing a separate return, having a gross income for the taxable year of six hundred dollars ($600.00) or over and married individuals filing a joint return having a combined gross income for the taxable year of twelve hundred dollars ($1,200.00) or over shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe.* Annual income tax return required.

*(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.* Optional—joint return.

*(3)* If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer. Return by agent or guardian.

*(4)* All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84 4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar ($1.00) than the amount withheld and/or paid by estimated return as provided in this act. Computation and payment.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess. Refund.

*(5)* As soon as practiable after the return is filed, the board shall examine and verify the tax. Verification by board.

*(6)* If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the Payment of excess—interest.



HeinOnline -- 1963 vol. I 601 1963

taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of *six per centum (6%) per annum* or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

Deficiency penalty.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud. there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2.00). Interest will be computed at the rate of *six per centum (6%) per annum* or fraction thereof on the additional assessment. Except *as* otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due *(as distinguished from the due date as it may have been extended)* to the date of payment.

Interest.

Extension—interest.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.''

Amending clause.

Section 2. That Section 84-4922, R. C. M. 1947, is amended to read as follows:

''Section 84-4922. **Revision — application — hearing — adjustment.** If an application for revision be filed with the board by a taxpayer within *five (5) years* from the original due date of the return the board shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the board shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer.''

Revision within 5 years.

Hearing.

Resettlement.

Notice.

Amending clause.

Section 3. That Section 84-4924, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 602 1963

"Section 84-4924. **Penalties for violations of act.** If any person, without intent to evade any tax imposed by this act, fails to make a return of income or pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to five (5) per centum thereof, *but not less than two dollars ($2.00), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of six per centum (6%) per annum shall be added to the tax for the entire period it remains unpaid.*

Violations—penalties.

Interest.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than two dollars ($2.00), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

Evasion—penalty.

Interest.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the board thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

Evasion—penalty and fine.

Civil action.

Misdemeanor.

(4) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid,

Prima facie evidence.



HeinOnline -- 1963 vol. I 603 1963

that such return has not been filed, or that such information has not been supplied."

Effective years.

Section 4. This act is affective as to taxable years ending on and after December 31, 1962.

Approved March 7, 1963.

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## CHAPTER 202

An Act Requiring and Providing for Filing of Corner Records Containing Information on Public Land Survey Corners by a Licensed Land Surveyor; Defining Terms; Providing for Filing and Filing Fees, and Making Records Available to the Public; Allowing Licensed Land Surveyors to File Information on Any Property Corner; Requiring Surveyors to Reconstruct and Perpetuate Monuments of Public Land Survey Corners; Directing That Unconstitutionality of a Part of This Act Shall Not Affect or Impair the Remainder, and Repealing All Acts and Parts Inconsistent Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Title.

Section 1. This Act may be cited as the "Corner Recordation Act of Montana."

Purpose—protection of property corners.

Section 2. It is the purpose of this Act to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of ownerships; and thereby eliminating the repeated necessity for re-establishment and relocations of such corners where once they are established and located.

Definitions.

Section 3. **Definitions.** Except where the context indicates a different meaning, terms used in this Act shall be defined as follows:

"Property corner."

(1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.



HeinOnline -- 1963 vol. I 604 1963

(2) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question. "Property controlling corner."

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States Government. "Public land survey corner."

(4) A "corner", unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these. "Corner."

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects. "Accessory to a corner."

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner. "Monument."

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner. "Reference monument."

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under the Montana Professional Engineers Registration Act and has a paid up license for that calendar year, or who is authorized under the Montana Professional Engineers Registration Act to practice land surveying. "Registered surveyor."

(9) The "board" is the State Board of Registration for Professional Engineers and Land Surveyors. "Board."

Section 4. **Filing of corner record required.** A surveyor shall complete, sign, stamp with his seal and file with the county clerk and recorder of the county where the corner is situated, a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such Duty of surveyor to file record of corner with county clerk.



HeinOnline -- 1963 vol. I 605 1963

corner which is established, re-established, monumented, re-monumented, restored, rehabilitated, perpetuated or used as control in any survey by such surveyor, and within ninety (90) days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this Act.

Filing permitted.

Section 5. **Filing permitted as to any property corner.** A surveyor may file such corner record as to any property corner, property controlling corner, reference monument or accessory to a corner.

Form.

Section 6. **Form to be prescribed by board.** The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record and the board shall prescribe the form in which such corner record shall be presented and filed.

Duties of county clerk—records.

Section 7. **County clerk shall receive, file and cross reference.**

(1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hard-bound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the said corner record is filed shall be placed by the clerk near that same corner on a cross index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to recording a townsite map of one (1) lot.

Surveyor must rehabilitate monuments.

Section 8. **Surveyor must rehabilitate monuments.** In every case where a corner record of a public land survey corner is required to be filed under the provisions of this Act, the surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner, so that the same shall be left by him in such



HeinOnline -- 1963 vol. I 606 1963

physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

Corner record must be certified.

Section 9. **Corner records to be certified.** No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States Government or the state of Montana the certificate may be signed by the survey party chief, making the survey and approved, signed and sealed by the registered surveyor in responsible charge of the agency.

Existing corners.

Section 10. **Filing of corner records on locations made before effective date.** Corner records may be filed concerning corners established, re-established or restored before the effective date of this Act.

Severability.

Section 11. **Severability of provisions.** It is the intent of the legislative assembly that if a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Repealing clause.

Section 12. **Repealing clause.** All acts and parts of acts inconsistent with this Act are hereby repealed.

Approved March 7, 1963.

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## CHAPTER NO. 203

An Act to Amend Section 75-1802, Revised Codes of Montana, 1947, Relating to Classifications of School Districts and Providing That Three Times the Number of School Census Children May Be Used to Compute the Population of the School District.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-1802, R. C. M. 1947, is amended to read as follows:

Classifications of districts.

"75-1802. (1021) **Classifications of districts—number of trustees.** All districts having a population of eight



HeinOnline -- 1963 vol. I 607 1963

thousand (8000) or more shall be districts of the first class. All districts having a population of one thousand (1000) or more, and less than eight thousand (8000) shall be districts of the second class, and all districts having a population of less than one thousand (1000) shall be districts of the third class. In districts of the first class the number of trustees shall be seven (7); in districts of the second class the number of trustees shall be five (5), and in districts of the third class the number of trustees shall be three (3).

Number of trustees.

Change to proper class

Whenever the population of any school district shall increase beyond or decrease below the number required as specified above for a certain class of school district, the county superintendent of schools shall declare such school district to be changed to the proper class. *The county superintendent may compute the population by multiplying by three the number of school census children in the district. No school district shall be changed in classification more than once in any five (5) year period.* The county superintendent of schools shall take the necessary steps to provide that at the next school election to elect the proper number of school trustees as designated above and to fill all vacancies due to any change of classification. Provided however that the provisions of this act shall not affect the terms of trustees heretofore elected.''

Computation.

One change in five years allowed.

Elections—duties of county superintendent.

Approved March 7, 1963.

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## CHAPTER NO. 204

An Act to Redefine Occasional Transportation, 'For Hire' Operation, and Prima Facie Acts Deeming a Person to Be a Motor Carrier; Increasing Fines Imposed for Violations; and Amending Sections 8-101, 8-119 and 8-121, R. C. M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 8-101, R. C. M., 1947, is amended to read as follows:

Definitions.

''8-101. (3847.1) **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases



HeinOnline -- 1963 vol. I 608 1963

shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

"Board." (a) The word 'board' means the board of railroad commissioners of the state of Montana.

"Corporation." (b) The term 'corporation' means a corporation, company, association or joint stock association.

"Person." (c) The term 'person' means an individual, firm or co-partnership.

"Certificate." (d) The word 'certificate' means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

"Public highway." (e) The term 'public highway' means every public street, road, highway, or way in this state.

"Motor vehicle." (f) The term 'motor vehicle' shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons and/or property.

"Between fixed termini over a regular route." (g) The words 'between fixed termini or over a regular route' when used in this act, mean the termini or route between or over which any motor carrier usually or ordinarily operates any motor vehicles, even though there may be periodical or irregular departures from said termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, within the meaning of this act, shall be a question of fact to be determined by the board.

"Motor carrier." (h) The term 'motor carrier,' when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school busses which are used in conveying



HeinOnline -- 1963 vol. I 609 1963

school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred persons, or within the commercial areas thereof as determined by the board.

"For hire." (i) The words 'for hire' mean for remuneration of any kind, paid or promised, either directly or indirectly, *or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service.* An accommodative transportation *movement* by a person not in the transportation business shall not be construed as a service for hire, even though the persons *owning the property* transported *or persons transported* share in the cost or pay for the *movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.*

"Compensation." (j) The word 'compensation,' as used in this act, shall mean the charge imposed upon motor carriers in consideration of the use of the highways in this state by such motor carriers, as provided in section 8-116.

"Railroad." (k) The word 'railroad' means the movement of cars on rails, regardless of the motive power used therefor."

Amending clause. Section 2. Section 8-119, R. C. M., 1947, is amended to read as follows:

Violations—penalties. "8-119. (3847.19) **Penalties for violations.** Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction,



HeinOnline -- 1963 vol. I 610 1963

demand, or requirement of the board, or any part of provisions thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than *twenty-five dollars ($25.00)* nor more than *five hundred dollars ($500.00),* or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.''

Section 3. Section 8-121, R. C. M., 1947, is amended to read as follows: Amending clause.

''8-121. (3847.21) **Acts which prima facie deem person to be motor carrier.** Any person, firm or corporation maintaining a public motor vehicle stand, or by sign, symbol, or device or vehicle or clothing, or by advertisement holds forth transportation for compensation, or solicits the transportation of persons or property for compensation among the public, or solicits for trips for compensation, *or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements,* shall be deemed, prima facie, a 'motor carrier' subject to this act, and the burden of proof shall be on such person, firm or corporation to disprove such status.'' Acts which prima facie deem person to be motor carrier.

Section 4. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. Severability.

Approved March 7, 1963.

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## CHAPTER NO. 205

An Act Providing for Appointment of a Supervisor of Motor Carriers by the Board of Railroad Commissioners; Describing the Duties, Qualifications and Powers of Such Supervisor; and Amending Section 8-103, R. C. M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 8-103, R. C. M., 1947, is amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. I 611 1963

Authority and duty to regulate motor carriers.

"8-103. **Board of railroad commissioners to supervise and regulate motor carriers**—*appointment and duties of supervisor. (a)* The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and non-discriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

Board shall appoint supervisor—duties.

*(b) The board shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this act. The supervisor shall direct all enforcement activities in behalf of the board, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the board. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least fice (5) years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the board and at an annual salary to be set by the board. The supervisor, and whatever field inspectors may be employed by the board to assist him, shall be deemed peace officers for the purpose of making arrests in connection with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.*

Qualifications.

Deemed peace officers.

Authority to inspect.

Relation to class.

*(c)* All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class



HeinOnline -- 1963 vol. I 612 1963

A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the board shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier."

Considerations in rate making.

Approved March 7, 1963.

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## CHAPTER NO. 206

An Act Relating to Motor Vehicles; Creating, Amending and Repealing Laws on Motor Vehicle Reciprocal or Proportional Registration Agreements, Arrangements and Declarations With Other States, Provinces, Territories and Countries, So as to Conform Substantially With the Model Reciprocity and Proration Draft Proposed by the National Committee on Uniform Traffic Laws and Ordinances; Providing a Declaration of Policy, Definitions, Creation of Montana Motor Vehicle Reciprocity Board, and Authority of Said Board; and Providing Other Related Sections for Carrying Out the Policy, Construction and Administration of This Act; Providing a Severability Clause; Amending Section 53-129, R. C. M., 1947, as Amended; Repealing Section 53-625, R. C. M., 1947, as Amended; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. **Declaration of policy.** It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to

Policy of state to promote use of highways.



HeinOnline -- 1963 vol. I 613 1963

the economic and social development and growth of this state.

Definitions.

Section 2. **Definitions.** As used in this act:

"Commercial vehicle."

(1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

"Jurisdiction."

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

"Owner."

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

"Legal residence."

(4) "Legal residence", as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile". This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

"Properly registered."

(5) (a) "Properly registered", as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dis-



HeinOnline -- 1963 vol. I 614 1963

patched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

Determination by Montana motor vehicle reciprocity board.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

"Fleet."

(6) "Fleet" means two (2) or more commercial vehicles.

"Person."

(7) "Person", for purposes of this act, means every natural person, firm, co-partnership, association, or corporation.

"Motor vehicle."

(8) "Motor vehicle" means every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

"Vehicle."

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

"Preceding year."

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

Section 3. **Montana motor vehicle reciprocity board**



HeinOnline -- 1963 vol. I 615 1963

Board created—six members appointed by governor—qualifications.

**creation.** (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

First meeting.

Election of officers.

Meetings.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members.

Quorum.

Authority of board.

Section 4. **Authority of Montana motor vehicle reciprocity board.** The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreement or declarations to carry out the provisions of this act.

Reciprocity agreements.

Section 5. **Authority for reciprocity agreements, pro-**



HeinOnline -- 1963 vol. I 616 1963

**visions, reciprocity standards.** The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

Base state registration reciprocity.

Section 6. **Base state registration reciprocity.** An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

Effect.

Proportional registration of fleet vehicles.

Section 7. **Proportional registration of fleet vehicles.** If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's



HeinOnline -- 1963 vol. I 617 1963

highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of aportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

Board may adopt exemption.

Limitation.

Rules and regulations—registration.

Section 8. **Declarations of extent of reciprocity.** In the absence of an agreement or arrangement with another jurisdiction, the Montana motor vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and

Board may examine laws of other jurisdictions—declare extent of reciprocity.



HeinOnline -- 1963 vol. I 618 1963

all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

Extension to leased vehicles.

Section 9. **Extension of reciprocal privileges to lessees authorized.** An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

Automatic reciprocity.

Section 10. **Automatic reciprocity.** On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

Proportional registration not exclusive.

Section 11. **Proportional registration not exclusive.** Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

Proportional registration of fleet vehicles.

Section 12. **Proportional registration of fleet vehicles, application, fee-formula and payment.** (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

Application.

Total fleet miles.

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.



HeinOnline -- 1963 vol. I 619 1963

Total in-state miles.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

Vehicle identification.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

Fees—computation.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

Highway commission shall register and issue identification device.

Section 13. **Registration and identification of proportionally registered vehicles, effect of such registration.** (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees for such application and for the stickers or devices issued. A fee of two dollars ($2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

Fees.

Card.

Effect of registration.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless



HeinOnline -- 1963 vol. I 620 1963

the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

Must be registered in at least one other jurisdiction.

Section 14. **Proportional registration cannot be in a single jurisdiction.** The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

Registration—added vehicles.

Section 15. **Registration of additional fleet vehicles.** Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

Withdrawal of vehicle.

Notice.

Form.

Surrender.

Section 16. **Withdrawal of fleet vehicles, credits and accounting.** If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced

Credit on permanent withdrawal—computation.



HeinOnline -- 1963 vol. I 621 1963

by 1/12 of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 hereof. If any such credit is less than five dollars ($5.00), no credit shall be made or entered. In no event shall such amount be credited against fees other than those for such registration year, nor shall any such amount be subject to refund.

Application of credit.

Limitations.

Initial application—new fleet.

Section 17. **New fleet; estimated mileage.** The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

Commission may deny fleet registration.

Section 18. **Fleet registration may be denied.** The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the Montana motor vehicle reciprocity board shall find that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

Owner shall preserve records.

Section 19. **Preservation of proportional registration records.** Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said



HeinOnline -- 1963 vol. I 622 1963

application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

Relation to other state laws.

Section 20. **Relation to other state laws.** The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

Commission may suspend.

Section 21. **Suspension of reciprocity benefits.** Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

All agreements must be filed.

Section 22. **Agreements to be written, filed and available for distribution.** All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor vehicle reciprocity board shall provide copies for public distribution upon request.

Continuation—existing reciprocity.

Section 23. **Reciprocity agreements in effect at time of act.** All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.



HeinOnline -- 1963 vol. I 623 1963

Supplement to motor vehicle registration law.

Section 24. **Act part of and supplement to motor vehicle registration law.** This act shall be a part of title 53, R. C. M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

Severability.

Section 25. **Severability.** If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid.

Section 26. Section 53-129, R. C. M., 1947, as amended, is amended to read as follows:

Amending clause.

"53-129. (1760.7) **Foreign vehicles used in gainful occupation — reciprocity board may make reciprocal agreements to exempt.** Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle which is a part of an interstate fleet registered and licensed under the pro-

Application—registration of foreign licensed vehicle.

Fee.

Receipt.

Plates—markers.

Limitations.



HeinOnline -- 1963 vol. I 624 1963

visions of section 53-114, nor to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into *under the provisions of this act.*"

Repealing clause.

Section 27. Section 53-625, R. C. M., 1947, as amended, is repealed.

Effective immediately.

Section 28. **Effective date.** This act shall be in full force and effect from and after its passage and approval.

Approved March 7, 1963.

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## CHAPTER 207

An Act to Amend Section 68-901, R. C. M. 1947, relating to the Allowances to Be Paid Members of the Public Employees' Retirement System of the State of Montana Upon Their Retirement from State Service, and to Amend Section 68-1101, R. C. M. 1947, Relating to the Benefits Payable Upon the Death of Members of the Public Employees' Retirement System.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 68-901, R. C. M. 1947, is amended to read as follows:

Service retirement allowance.

"68-901. **Service retirement allowance.** A member upon retirement from service is entitled to receive a service retirement allowance which shall consist of:

Annuity.

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.

Pension.

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to *(1)* that portion of the annuity purchased by the accumulated normal contributions of the member, *or (2) one quarter (1/4) of his average final compensation provided his total state service is at least thirty-five (35) years, otherwise, a pension which shall be one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of state service; which is greater.*

Additional pension—exceptions.

(c) An additional pension, purchased by the contributions of the state, for members other than persons who



HeinOnline -- 1963 vol. I 625 1963

are employees of the university at the time of becoming members, and members employed by a contracting city. Such additional pension shall be equal to one-seventieth (1/70) of the member's final compensation, multiplied by the number of years of prior service, except that if a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five (65) will purchase at the actual age of retirement.

Retirement before 65—reduced pension.

(d) If a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this section as deferred to age sixty-five (65) will purchase at the actual age of retirement.

Additional pension—employees of university.

(e) An additional pension, purchased by contributions of the state, for members who are also employees of the university at the time of becoming members, said additional pension to accrue from the date of retirement under the system regardless of whether said retirement was prior to the effective date hereof. Such additional pension shall be equal to one-seventieth (1/70) of the average annual compensation earnable by him during the three (3) years preceding retirement, multiplied by the number of years of prior service credited to him, except that if a member retires before attaining the age of sixty-five (65) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five (65), will purchase at the actual age of retirement. If, however, a member who is employed by the university at the time of becoming a member, shall not have rendered state service before January 1, 1946, his additional pension shall be based upon one-seventieth (1/70) of the average annual compensation earnable by him during the first year of the state service or such portion thereof as he may have served before January 1, 1946, multiplied by the number of years of prior service credited to him.

Additional pension—city employees.

(f) An additional pension on account of prior service, purchased by the contributions of the contracting city for members who are also employees of a contracting city as



HeinOnline -- 1963 vol. I 626 1963

may be provided for under the contract between the board and the contracting city.

## MINIMUM GUARANTEE

Minimum guarantee.

(g) When a member enters the retirement system with, or without, credit for prior service, and is otherwise eligible for retirement after attaining the age of seventy (70) years, if his final compensation was such that one-half (½) thereof is in excess of the total of his pension, annuity, and additional pension for prior service, a second additional pension for prior service sufficient to cause his retirement allowance to amount to one-half (½) of such final compensation shall be paid him on account of prior service, but in no event shall a greater second additional pension be paid than will cause the total retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars ($480.00) per year. The provisions of this section shall not apply to the members who are employees of a contracting city unless provided for by contract between the board and the contracting city, but if a member be employed by more than one (1) of such cities, his aggregate retirement allowances shall be taken into account in applying said provisions, and said application shall be made as if the member was employed by one or more offices or departments of the state.

Exception.

## DISABILITY RETIREMENT

Disability retirement—incapacity as result of injury in course of employment.

(h) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations,

Powers of board—hearings, oaths, depositions, subpoena, discovery.



HeinOnline -- 1963 vol. I 627 1963

take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

Retirement.

Application for medical examination.

(i) Subject to the requirements as to service and cause of disability stated in subdivision (h) of this section, and upon the application of a member or upon the application of the head of the office or department in which such member is or was last employed, or upon application of the university, if such member is an employee of the university, or any other person on behalf of such member, while such member is in state service, within four (4) months after such member's discontinuance of state service, or while such member continuously, from the date of discontinuance of state service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board of administration upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board of administration shall order such medical examination. If the medical examination and other available information show, to the satisfaction of said board, that the member is incapacitated physically or mentally for the performance of his duties in the state service, the said board shall forthwith retire the member for disability. The said board shall secure such medical service and advice as is necessary to carry out the purposes of this section and of sections 68-1001 through 68-1004, and shall pay for such medical services and advice such compensation as the board deems reasonable.

Retirement.



HeinOnline -- 1963 vol. I 628 1963

## DISABILITY RETIREMENT ALLOWANCE

Disability retirement allowance.

(j) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a), (b), (c) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation; *provided, however, that for any period of time for which the industrial accident board has awarded compensation to the member, whether or not such compensation is received in weekly payments or in a lump sum, the retirement allowance shall be twenty-five per centum (25%) of his final compensation and at the end of such period of time shall revert to fifty per centum (50%) as provided above.*

Reduction—benefits paid by industrial accident board

University employee—service retirement allowance.

(k) Upon retirement for disability a member who is an employee of the university and who has attained the age of sixty (60) years, shall receive a service retirement allowance as provided in subdivisions (a), (b) and (c) of this section.

Other retirement allowance.

(l) Every other member retired for disability shall receive a retirement allowance which shall consist of:

Annuity.

(i) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

Pension.

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension purchased by the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to (a) ninety per cent (90%) of one-seventieth (1/70) of his final compensation multiplied by the number of years of service credited to him, if such disability retirement allowance exceed one-fourth (1/4) of his final compensation; otherwise, (b) ninety per cent (90%) of one-seventieth (1/70) of his final compensation multiplied by the number of years of service which would be



HeinOnline -- 1963 vol. I 629 1963

creditable to him were his service to continue until attainment by him of age sixty-five (65), but in such case the retirement allowance shall not exceed one-fourth (1/4) of such final compensation. In no event, however, shall the pension purchased by the contributions of the state or of the contracting city be more than sufficient to make the disability retirement allowance, exclusive of the annuity provided by accumulated additional contributions, exceed the service retirement allowances, exclusive of any annuity purchased by accumulated additional contributions, receivable by the member should he retire at the lowest age at which he would be eligible for service retirement.

Lump sum—accumulated contributions.

(iii) If, in the opinion of the board, the disability is due to intemperance, willful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under subdivisions (j), (k) and (l) of this section, is less than two hundred forty dollars ($240.00) per year, the board of administration in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions."

Amending clause.

Section 2. Section 68-1101, R. C. M. 1947, is amended to read as follows:

Death benefit.

"68-1101. **Death benefit.** Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which death benefit shall be paid to such person having an insurable interest in his life as he has nominated by written designation duly executed and filed with the retirement board *or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201;* provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, or (b) who has received a disability retirement allowance as provided for in paragraphs (i) through (l) of section 68-901, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

Exceptions.

Computation.



HeinOnline -- 1963 vol. I 630 1963

(a) His accumulated contributions, and in addition thereto,

(b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty (50) per centum of such compensation.

Election to take installments.

(c) A member, or a beneficiary after death of a member, may elect, by written designation, duly executed and filed with the board of administration to have the death benefit provided in clauses (a) and (b) paid in monthly installments, fixed in number or amount, all subject to such rules and regulations as the board may adopt. Regular interest shall be credited on the unpaid balance of such benefit, at rates then in use under the system as adopted by the board from time to time.

Interest.

Death from injury in course of employment—benefit limited.

(d) If compensation is awarded by the industrial accident board of the state of Montana by reason of a finding that the member's death resulted from injury or disease arising out of or in the course of employment, the death benefit payable hereunder shall be limited to a refund of the member's accumulated contributions. In any case where the industrial accident board makes a determination that death of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation therefor, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

Industrial accident board shall certify findings and determination.

Beneficiary may elect to take a life annuity.

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions; and provided that this provision be retroactive for all



HeinOnline -- 1963 vol. I 631 1963

members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

Beneficiary may elect to take death benefit.

(f) The beneficiary named in (e) above shall have the right within ninety (90) days of the member's death to elect to receive a death benefit instead of the benefit designated in (c) above."

Severability.

Section 3. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Repealing clause.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 5. This act is effective on its passage and approval.

Approved March 7, 1963.

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## CHAPTER 208

A Act to Provide that a Joint Tenancy, Ownership of Property May Be Established by Conveyance or Transfer of Such Property Without the Necessity of Transfer to or Through Any Third Person.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Joint tenancy—conveyance by owner.

Section 1. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

Approved March 7, 1963.

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## CHAPTER 209

An Act to Amend Section 75-2701, Revised Codes of Montana, 1947, Relating to Earnable Compensation of the Teachers' Retirement System, and Providing That Full Compensation Received After July 1, 1961, May



HeinOnline -- 1963 vol. I 632 1963

Be Used in Computing Benefits, and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 75-2701, R. C. M. 1947, be, and the same is hereby amended to read as follows: Amending clause.

"Section 75-2701. **Definitions.** The following words and phrases used in this act shall have the following meaning unless a different meaning is plainly required by the content: Definitions.

(1) 'Retirement system' shall mean the teachers' retirement system of the state of Montana provided for in section 75-2702. "Retirement system."

(2) 'Retirement board' shall mean the retirement board provided by section 75-2703 to administer the retirement system. "Retirement board."

(3) 'Employer' shall mean the state of Montana or the board of trustees of any school district employing teachers subject to the provisions of this act; or any other agency of and within the state by which the teacher is paid. "Employer."

(4) 'Teacher' shall mean any teacher in the public elementary and high schools of the state, and the university of Montana, as constituted in accordance with section 75-401, including all kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice-principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this state, and any administrative officer or member of the instructional or scientific staff of the university of Montana; provided that no person shall be deemed a teacher within the meaning of this act who is not so employed for fulltime outside vacation periods. The word 'teacher' shall also include any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional services. In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this act. "Teacher."



HeinOnline -- 1963 vol. I 633 1963

"Member." (5) 'Member' shall mean any person included in the membership of the system as provided in section 75-2704.

"Service." (6) 'Service' shall mean service as a teacher as described in subsection (4) of this section and paid for by an employer as described in subsection (3) of this section.

"Prior service." (7) 'Prior service' shall mean service as a 'teacher' or in a similar capacity outside of the state, rendered prior to the date of establishment of the system, and in case of teachers in the university of Montana rendered prior to September 1, 1939, for which credit is allowable as provided in section 75-2705; provided, further, that any teacher, mustered into or serving in the military forces of the United States government during the period of war shall receive 'prior service credit' for such period of service.

"Membership service." (8) 'Membership service' shall mean service as a teacher rendered while a member of the retirement system.

"Creditable service." (9) 'Creditable service' shall mean prior service plus membership as provided in section 75-2705.

"Beneficiary." (10) 'Beneficiary' shall mean any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by this act.

"Regular interest." (11) 'Regular interest' shall mean interest at four per centum (4%) per annum compounded annually, or at such other rates as may be set by the retirement board in accordance with subsection (2) of section 75-2708.

"Accumulated contributions." (12) 'Accumulated contributions' shall mean the sum of all the amounts deducted from the compensation of a member or paid by a member as provided for in sections 75-2705 and 75-2709, and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement. Interest at the rate of three fourths (3/4) the regular rate shall be computed and credited to the pension accumulation fund when withdrawn for any other purpose subsequent to July 1, 1945.



HeinOnline -- 1963 vol. I 634 1963

"Earnable compensation."

(13) 'Earnable compensation' shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of *seven thousand dollars ($7,000)* per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of *five thousand seven hundred dollars ($5,700)* per annum subsequent to *July 1, 1961,* may use such salary or that portion of it not in excess of *seven thousand dollars ($7,000)* as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to *July 1, 1961* over *five thousand seven hundred dollars ($5,700)* and not exceeding *seven thousand dollars ($7,000)* to his individual account in the annuity savings fund and (b) he contributes three and one half per cent (3½%) of the excess of his salary subsequent to *July 1, 1961,* over *five thousand seven hundred dollars ($5,700)* and less than *seven thousand dollars ($7,000)* to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

"Average final compensation."

(14) 'Average final compensation' shall mean the average annual compensation, pay or salary on which the five per cent (5%) contribution has been made by a member during any three (3) consecutive years as a teacher.

"Medical board."

(15) 'Medical board' shall mean the board of physicians provided for in section 75-2703.

"Annuity."

(16) 'Annuity' shall mean payments for life derived from the accumulated contributions of a member as provided in this act. All annuities shall be paid in equal monthly installments.

"Pension."

(17) 'Pension' shall mean payments for life derived from money provided by the employer as defined in this act. All pensions shall be paid in equal monthly installments.

"Retirement allowance."

(18) 'Retirement allowance' shall mean the annuity plus the pension.

"Annuity reserve."

(19) 'Annuity reserve' shall mean the present value of all payments to be made on account of a member's



HeinOnline -- 1963 vol. I 635 1963

annuity granted under the provisions of this act, computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

"Pension reserve." (20) 'Pension reserve' shall mean the present value of all payments to be made on account of a pension granted under the provisions of this act, computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

"Actuarial equivalent." (21) 'Actuarial equivalent' shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

"Former retirement system." (22) 'Former retirement system' shall mean the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935."

Repealing clause. Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 7, 1963.

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## CHAPTER 210

An Act Authorizing Boards of County Commissioners to Issue Funding Bonds After July 1, 1963, to Fund Outstanding County Warrants As of June 30, 1963; Providing the Term of Funding Bonds; Providing for a Public Hearing; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

County commissioners having unpaid warrants exceeding $200,000 on June 30, 1963, may sell funding bonds. Section 1. The board of county commissioners of any county having, at the close of business on June 30, 1963, an indebtedness in excess of two hundred thousand dollars ($200,000) consisting of outstanding warrants issued against any authorized county fund or funds and, being without sufficient money in any such fund or funds with which to pay the same, may, on and after July 1, 1963, issue and sell negotiable funding bonds to the extent that such outstanding warrants shall exceed the total cash on hand in such funds of the county as of the close of business on June 30, 1963, for the purpose of funding, paying, and retiring such outstanding warrants.



HeinOnline -- 1963 vol. I 636 1963

No election required.

Section 2. Such funding bonds may be issued and sold without the board of county commissioners being required to submit the question of issuing such bonds at an election; and provided, further, that such bonds, when issued, may with all other outstanding indebtedness of the county exceed, in the aggregate, the limit of indebtedness fixed by section 16-2010, R. C. M. 1947, but the total of all outstanding indebtedness of the county including funding bonds shall not exceed in the aggregate the five per cent (5%) limit of indebtedness permitted such county under section 5 of article XIII of the Montana constitution.

Limitations on amount.

Term.

Section 3. Such bonds shall be issued for a term not to exceed ten (10) years and shall be sold on the basis of competitive bids in accordance with the laws of the state of Montana governing the issuance, sale and exchange of county bonds and the levying of taxes for the payment of principal and interest and the redemption thereof.

Bids.

Before resolution—county board shall publish proclamation.

Section 4. Before adopting a resolution providing for the issue and sale of such bonds, the board of county commissioners shall publish a proclamation declaring its intention to so adopt a resolution for the issue and sale of funding bonds. The proclamation shall set forth the total amount of county warrants and indebtedness outstanding, the total amount of such proposed bond issue, the proposed methods of payment and redemption, and such further information as the board shall consider necessary. The proclamation shall provide for a public hearing to be conducted at least ten (10) days subsequent to the publication. Any taxpaying elector of the county may attend such hearing and present written or oral protest to the passage of the resolution and the board shall fully consider all protests so submitted. If, after considering all protests, the board determines that the best interests of the county require the issuance of such funding bonds, its decisions shall be final and it may adopt the necessary resolution for the issue and sale of such funding bonds.

Hearing.

Resolution.

Purpose of act.

Section 5. The purpose of this act is to allow any county having an indebtedness in excess of two hundred thousand dolars ($200,000) consisting of outstanding



HeinOnline -- 1963 vol. I 637 1963

warrants and being without sufficient money to pay the same out of current tax receipts, to achieve a sound and current financial basis and to attain a position of compliance with county budget laws.

Effective immediately until December 31, 1963.

Section 6. This act shall be in full force and effect from and after its passage and approval and shall be effective from the date of its approval until December 31, 1963.

Approved March 7, 1963.

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## CHAPTER 211

An Act to Amend Section 32-2137, R. C. M. 1947, Relating to Traffic Control Signals.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 32-2137, R. C. M. 1947, is amended to read as follows:

Traffic control signal legend.

"Section 32-2137. **Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words 'Go,' 'Caution,' or 'Stop,' or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green Alone or 'Go':

Green or go.

1. Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the time such signal is exhibited.

2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

Yellow or caution

(b) Yellow Alone or 'Caution' When Shown Following the Green or 'Go' Signal:



HeinOnline -- 1963 vol. I 638 1963

1. Vehicular traffic facing the signal is thereby warned that the red or 'Stop' signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or 'Stop' signal is exhibited.

2. Pedestrians facing such signals are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

(c) Red Alone or 'Stop': Red or stop.

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or 'Go', is shown alone. 2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with Green Arrow: Red with green arrow.

1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

*(e) Red with Traffic Sign Legend: Right Turn on Red After Stop.* Right turn on red after stop.

*1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.*

*2. No pedestrian facing such signal and legend shall enter the roadway until the green or 'Go' is shown alone.*

*(f)* Traffic Control Signal at Place Other Than Intersection: Signal at place other than intersection.



HeinOnline -- 1963 vol. I 639 1963

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

Approved March 7, 1963.

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## CHAPTER 212

An Act Amending Section 25-501, R. C. M. 1947, and Amending Section 93-303, and Repealing Section 72-106, to Increase the Salaries of Elected State Executive Officials, Supreme Court Judges, District Court Judges and Others, and Providing for an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 25-501, R. C. M. 1947, is amended to read as follows:

Salary schedule—elected state officials.

"25-501. **Salaries of elected state officials.** The annual salaries paid to the various elected officials of the state of Montana shall be as follows:

| | |
|---|---|
| Governor | *$22,000.00* |
| Chief justice of the supreme court | *$17,000.00* |
| Justices of the supreme court, each | *$16,000.00* |
| Attorney general | *$15,000.00* |
| State auditor | *$10,000.00* |
| Superintendent of public instruction | *$12,500.00* |
| Railroad commissioner | *$10,000.00* |
| State treasurer | *$10,000.00* |
| Secretary of state | *$10,000.00* |
| Clerk of the supreme court | *$ 8,500.00* |

Amending clause.

Section 2. Section 93-303, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. I 640 1963

"93-303. **Salaries of district judges.** The annual salary of each district judge shall be *fourteen thousand dollars ($14,000.00).* Salary—district judges.

Section 3. Section 72-106, R. C. M. 1947, and all other acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Section 4. This act shall take effect and be in force on and after July 1, 1964. Effective July 1, 1964.

Approved March 9, 1963.

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## CHAPTER 213

An Act Providing for the Collecting and Processing of Fees Due the State for the Care of Residents in Certain State Schools and Public Institutions; Amending Sections 10-119, 38-108 and 38-815, R. C. M. 1947; and Repealing Sections 38-118, 38-214, 38-304, 38-409, 38-411, 38-412, 38-707, 38-708, 38-808, 38-809, 38-809.1, 38-812, 80-211, 80-212, and 80-213, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The purpose of this act is to Purpose.

(1) Provide an equitable method for determining financial obligations for the support and care of residents in certain state schools and public institutions,

(2) Assure Montana's citizens that public moneys used to finance state institutions do not pay for care that might reasonably be borne by residents in certain state schools and public institutions, their parents, guardians or relatives, and

(3) Offer institutional administrators a workable procedure for assessing and collecting per diem costs.

Section 2. As used in this act Definitions—"certain state schools and public institutions."

(1) "Certain state schools and public institutions" means any of the following institutions:

(a) Montana children's center

(b) State hospital



HeinOnline -- 1963 vol. I 641 1963

(c) State training school and hospital

(d) State tuberculosis sanitarium

(e) Montana veteran's home

(f) Montana center for the aged.

"Full-time equivalent resident load."

(2) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

"Per diem."

(3) "Per diem" means the gross daily cost of operating a state school or public institution, excluding capital outlay for physical plant and the cost of educational programs, divided by the full time equivalent resident load.

"Resident."

(4) "Resident" means any person who is receiving care from, or who is a charge of or who is a resident of a state school or public institution.

"Responsible person."

(5) "Responsible person" means a relative, guardian or other person legally liable for the support and maintenance of a resident.

Responsibility—department of public institutions.

Section 3. The department of public institutions, hereafter referred to as 'department', is responsible for the collecting and processing of fees due to the state for the care of residents in certain state schools and public institutions.

Monthly assessment—per diem charge.

Section 4. (1) The department shall assess monthly against each resident or responsible person the per diem charge applicable to the state school or public institution of residence. If the resident is an Indian who is a ward of the federal government, the per diem charge shall be assessed against the appropriate agency of the federal government. The per diem rate shall be computed by the state budget director in accordance with section 2 of this act.

Application to pay less.

Investigation.

(2) A resident or responsible person may apply to the department for permission to pay less than the per diem charge or none of the per diem charge. On receipt of such application, the department shall request an investigation by the county department of public welfare of the county in which the resident or responsible person is a resident. The county department of public welfare shall



HeinOnline -- 1963 vol. I 642 1963

Report—county department of public welfare.

submit to the department, on forms furnished by the department, no later than sixty (60) days after the request, a report and recommendation on the ability of the resident or responsible person to pay all or a part of the per diem charge. Upon receipt of the report, the department shall determine, based on the financial ability of the resident or responsible person, whether the resident or responsible person shall be charged with the full amount, a lesser amount, or whether no charge against the resident or responsible person shall be made. If a resident, responsible person, or a county where a resident resides, disagrees with the determination of the department, an appeal may be filed within thirty (30) days of the determination with the state board of public welfare. The decision of the board shall be final.

Determination based on financial ability.

Appeal.

Review.

(3) The department may, at any time, review and change any determination for per diem payments, and may, if necessary, request a further investigation by the appropriate county department of public welfare.

County of residence shall pay difference.

(4) Subject to the provisions of subsection (5) of this section, if the charge against the resident or responsible person is less than one hundred per cent (100%) of the per diem, the county of residence shall be charged with the difference between the per diem charged the resident or responsible person and one hundred per cent (100%) of the per diem, except that in no case shall the county of residence be charged with more than fifty per cent (50%) of the per diem.

Residence eligibility.

(5) Section 17-302, R. C. M. 1947, shall be used to determine a resident's eligibility for per diem contributions by the county of residency, except that time spent in a custodial institution shall not in any case be counted in determining the matter of county residence.

Failure to pay—civil action.

Section 5. If a resident or responsible person liable for per diem payments due under this act refuses or fails to make such payments, the payments are collectible by a civil suit brought in the name of the state of Montana. The state of Montana may sue such resident or responsible person for such payments due; and any judgment obtained is a lien upon the real property of such person, and shall be collected as other judgments. Any claim arising under this act has the same force and effect



HeinOnline -- 1963 vol. I 643 1963

against the real and personal property of a deceased person as other debts of a decedent, and shall be ascertained and recovered in the same manner.

Deposit in general fund.

Section 6. All moneys received by the department under this act shall be deposited in the state treasury to the credit of the general fund, unless otherwise specifically provided by law.

Amending clause.

Section 7. Section 10-119, R. C. M. 1947, is amended to read as follows:

Court may order child committed to Montana children's center.

"10-119. **Court may commit children.** Whenever in divorce proceedings the district court shall deem the parents improper persons to have the care, custody or control of children of the marriage, or whenever the abuse of parental authority shall be established by an action brought for that purpose, or whenever deemed for the best interest of children as shown by an investigation made by the department of public welfare, or by an individual designated by the court, the court may order the child or children committed to the Montana children's center."

Amending clause.

Section 8. Section 38-108, R. C. M. 1947, is amended to read as follows:

Department may send insane person out of state.

"38-108. **May contract with some other institution.** The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state."

Amending clause.

Section 9. Section 38-815, R. C. M. 1947, is amended to read as follows:

Costs paid from county poor fund.

"38-815. **Cost of hearing and transportation of persons admitted to school.** The costs of hearing and transportation of persons admitted to the school shall be paid by the county from which admitted out of its poor fund.

Repealing clause.

Section 10. Sections 38-118, 38-214, 38-304, 38-409, 38-411, 38-412, 38-707, 38-708, 38-808, 38-809, 38-809.1, 38-812, 80-211, 80-212 and 80-213, R. C. M. 1947, are repealed.

Approved March 9, 1963.



HeinOnline -- 1963 vol. I 644 1963

## CHAPTER 214

An Act to Amend Section 89-121 of the Revised Codes of Montana, 1947, Relating to the Authority of the State Water Conservation Board to Appropriate and Store, Divert and Control the Unappropriated Waters of the State, and Providing for Recording of Notice and Priority of Right.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 89-121 of the Revised Codes of Montana, 1947, is amended to read as follows:

"89-121. **Appropriation of waters—recording of notice—date of right.** In acquiring the rights and administering the terms of this act herein prescribed and established, the board shall not be limited to the terms of the statutes of the state of Montana relating to water rights heretofore enacted; but, in addition thereto, may initiate a right to the waters of this state by executing a declaration in writing of the intention to store, divert or control the unappropriated waters of a particular body, stream or source, designating and describing in general terms such waters claimed, means of appropriation and location of use, and cause said notice to be filed in the office of the county clerk and recorder of the county where the major portion of the means of diversion or control will be located, which right shall vest in such board on the date of the filing of such declaration. It shall be the duty of the county clerk and recorder of each county of the state of Montana on presentation to receive, record and index such declaration, without charge, in the manner prescribed by law relating to notice of water rights.

Board may appropriate waters.

Written declaration of intention.

Filing.

Duty of county clerk.

Copy as evidence.

A certified copy of the record of said declaration shall be received as competent evidence in all courts and deemed to be prima facie proof of all matters therein recited.

Priority—commencement of work.

The priority of right shall date and continue from the time of such filing or recording, provided the means of actual appropriation shall be commenced by actual work of construction within *four (4)* years from the date of original recording. Change in means or place of diversion



HeinOnline -- 1963 vol. I 645 1963

or control shall not affect the right of priority, if others are not thereby injured.

Effective immediately.

Section 2. This act shall be in full force and effect from and after its passage and approval.

Approved March 9, 1963.

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## CHAPTER 215

An Act to Provide for the Reciprocal and Expeditious Disposition of Detainers Filed Against Inmates of Prisons or Other Correctional Institutions of Party States; to Provide for the Speedy Trial of Persons Confined in a Penal or Other Correctional Institution of a Party State on Charges and Detainers Based on Untried Indictments, Informations or Complaints and to Provide for the Final Disposition of Such Charges and Detainers; to Provide That Temporary Custody of Such Prisoners May Be Made Available to Appropriate Officers of Party States for Trial; to Provide That Escape from Such Temporary Custody Shall Be Punishable by Confinement in the State Prison for a Term of Not Less Than One Year Nor More Than Ten Years; to Provide for the Appointment of a Coordinator of this Agreement; Providing for an Effective Date and a Repealing Clause.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Agreement on detainers.

Section 1. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

Article I

Findings—party states—prisoner treatment.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose

Purpose.



HeinOnline -- 1963 vol. I 646 1963

of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

## Article II

As used in this agreement: Definitions.

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico. "State."

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof. "Sending state."

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof. "Receiving state."

## Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial at the next term of court after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any neces- Prisoner's right to disposition of charge on detainer. Notice and request.



HeinOnline -- 1963 vol. I 647 1963

Certificate of custodian.

sary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

Forwarding to prosecuting official.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt request.

Custodian shall inform prisoner of detainer and right.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

Effect of request.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Custodian shall notify all prosecuting officials.

Copies.

Effect of no trial.

Order of dismissal.



HeinOnline -- 1963 vol. I 648 1963

Request deemed waiver of extradition.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

Consent.

Escape voids request.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

Request for temporary custody.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

Court shall approve record and transmit.

Governor of sending state may disapprove—30-day period.

Custodian's certificate and notice of request for temporary custody.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish



HeinOnline -- 1963 vol. I 649 1963

the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

Trial within 120 days of arrival in receiving state.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Prisoner's rights not affected.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

Effect of no trial.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

Sending state may offer temporary custody.

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary cus-



HeinOnline -- 1963 vol. I 650 1963

tody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

Notice.
Custody—federal prisoner.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

Officer accepting offer must present:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

Evidence of authority;

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

Certified copy of charge.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this act, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

Effect of nonacceptance or no trial.
Order of dismissal.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

Purpose of temporary custody—prosecution.
Prisoner held in suitable facility.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

Return to sending state.



HeinOnline -- 1963 vol. I 651 1963

Time being served.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

Custody—jurisdiction over escape.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

Receiving state responsible for keep and expenses during temporary custody.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

Time tolled.

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

Does not apply to mentally ill.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.



HeinOnline -- 1963 vol. I 652 1963

## Article VII

Each party state shall designate an officer.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

## Article VIII

Enactment.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law.

Withdrawal by repeal.

A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect nor shall it affect their rights in respect thereof.

## Article IX

Liberal construction—severability.

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

"Appropriate court" defined.

Section 2. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean; district courts.

Duty to enforce.

Section 3. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party



HeinOnline -- 1963 vol. I 653 1963

states in enforcing the agreement and effectuating its purpose.

Escape—punishment.

Section 4. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information or complaint and who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

Duty to deliver prisoner.

Section 5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

Governor shall appoint coordinator.

Section 6. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this act, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Transmission of copies.

Section 7. Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

Repealing clause.

Section 8. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 9. This act shall be in full force and effect from and after its passage and approval.

Approved March 9, 1963.

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## CHAPTER 216

An Act to Amend Section 75-2707, R. C. M., 1947, and Section 75-2709, R. C. M., 1947, Relating to the Minimum Retirement Benefits Paid by the Teachers' Retire-



HeinOnline -- 1963 vol. I 654 1963

ment System Under the Present System and Under the Former Retirement System; to Provide for an Increase in the Minimum Annual Retirement Allowance and to Provide for the Elimination of the Expiration Date of the Present Employers' Contributions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-2707, R. C. M., 1947, is amended to read as follows:

"75-2707. **Benefits.** (1) Superannuation retirement benefit. (a) Any member who has completed ten years of creditable service, the last ten years of which shall have been in this state, and who has attained the age of sixty may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

Voluntary retirement—ten years service—age of 60.

(b) That from and after the passage and approval of this act, any member in service who has attained the age of seventy years, during any school year shall be retired by said retirement board on the first day of September following his or her seventieth birthday.

Involuntary retirement—age of 70.

(2) Allowance on superannuation retirement. Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:

Retirement allowance.

(a) An annuity which shall be actuarial equivalent of his accumulated contributions at the time of his retirement, and

Annuity.

(b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five years, otherwise, a pension of one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service, and

Pension.

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundredth fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.

Additional pension.

(d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949,

Minimum—30 years.



HeinOnline -- 1963 vol. I 655 1963

shall be *twelve hundred dollars ($1,200.00),* and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty years shall receive a minimum retirement allowance based on the proportionate amount of *twelve hundred dollars ($1,200.00)* that his service bears to thirty years of service.

Minimum—35 years.

(e) The minimum annual retirement allowance for a member who has completed thirty-five years of service and who has attained the age of sixty-five and who retires after June 30, 1949, shall be *twelve hundred dollars ($1,200.00).*

Refund to beneficiary.

(f) In the event a member retired on a superannuation allowance has not received more than three retirement payments prior to death, the beneficiary of the member shall receive a refund of the difference between the total paid and the amount of the accumulated contributions.

Disability retirement—application.

(3) Disability retirement benefit. Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service in the state of Montana may be retired by the retirement board not less than thirty and not more than ninety days next following the date of filing such applications on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Retroactive payment.

If the applicant for disability retirement was prevented because of the disability from making application at the time of the commencement of disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of disability.

Superannuation allowance.

(4) Allowance on disability retirement. Upon retirement for disability a member shall receive a superannuation allowance if he is eligible for a superannuation allowance; otherwise he shall receive a disability retirement allowance which shall consist of:



HeinOnline -- 1963 vol. I 656 1963

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement, and

Annuity.

(b) A pension which, together with his annuity, shall provide a total retirement allowance equal to ninety per centum (90%) of one-seventieth (1/70) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter (¼) of his average final compensation; otherwise a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter (¼) of his average final compensation, provided, however, that no such allowance shall exceed ninety per centum (90%) of one-seventieth (1/70) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

Pension.

(c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death the difference between the amount paid and the total of the accumulated saving account of said member shall be paid to the beneficiary.

Payment to beneficiary.

(5) Re-examination of beneficiaries retired on account of disability. Once each year during the first five years following the retirement of a member on disability retirement allowance, and once in every three year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty to undergo a medical examination by the medical board or a physician or physicians designated by the medical board, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty refuse to submit to at least one medical examination in any year by the medical board, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the retirement board.

Medical examinations.

Effect of refusal.

(6) Should the medical board report and certify to the retirement board that any disability beneficiary is en-

Earning capacity—modification of pension.



HeinOnline -- 1963 vol. I 657 1963

gaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed the amount of his pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

Restoration to active service.

(7) Should a disability beneficiary under age sixty be restored to active service at a compensation not less than his average final compensation his retirement allowance shall cease; he shall again become a member of the retirement system and contribute thereto. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and in addition upon his subsequent retirement he shall be credited with all his service as a member, and should he be restored to active service on or after the attainment of the age of fifty-five years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new entrant.

Withdrawal—refund of savings to member.

(8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.



HeinOnline -- 1963 vol. I 658 1963

Death before retirement—refund of savings to estate or beneficiary.

(b) Should a member die before retirement only the amount of the member's contributions to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board.

Beneficiary may elect life annuity.

(c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

Support of minor child.

If the beneficiary so electing be the surviving spouse of the deceased member, such beneficiary shall receive, in addition to the monthly annuity, provided the deceased member was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars ($50.00) per month for each child from the pension accumulation fund for the support of the minor child or children of the deceased member until such child or children reach his or their eighteenth birthday, but such payments shall not exceed in any one (1) month the sum of one hundred dollars ($100.00).

Optional benefits—election.

(9) Optional benefits. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided, or he may on retirement elect to receive the actuarial equivalent at that time of his retirement or disability allowance in a lesser retirement allowance payable throughout life with the provision that:

Option 1. If he dies before he has received in payment of his annuity the amount of his accumulated contributions as they were at the time of his retirement, the ballance shall be paid to his legal representative or to such



HeinOnline -- 1963 vol. I 659 1963

person as he shall nominate by written designation duly acknowledged and filed with the retirement board; or

Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 4. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement, provided such other benefit or benefits, together with the lesser retirement allowance shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the retirement board."

Amending clause.

Section 2. Section 75-2709, R. C. M., 1947, is amended to read as follows:

Funds created.

"75-2709. **Method of financing.** There are hereby created and established an 'annuity savings fund' and 'annuity reserve fund', a 'pension accumulation fund', a 'pension reserve fund' and an 'expense fund', into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

Annuity savings fund defined.

(1) Annuity savings fund. The annuity savings fund shall be a fund in which shall be accumulated the contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made in the following manner:

Deductions.

(a) Each employer shall deduct from the compensation of each member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five per centum (5%) of such member's earn-



HeinOnline -- 1963 vol. I 660 1963

able compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty and rendered thirty-five years of creditable service if such a member elects not to contribute.

Computation.

(b) In determining the amount earnable by a member in a payroll period, the retirement board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per centum (1%) of the annual compensation upon the basis of which said deduction is to be made.

Consent of member.

(c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his salary or compensation; and payment of salary or compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by this act.

No deduction for default.

(d) Notwithstanding the preceding provision, no deduction shall be made from any member's salary on account of which the state's contributions on his account are in default.

Redeposit by member.

(e) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this act, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amounts computed to provide with his pros-

Deposit for additional annuity.

Limitation.



HeinOnline -- 1963 vol. I 661 1963

pective retirement allowance a total retirement allowance of one-half of his average final compensation at the minimum age at which the member will become eligible for superannuation retirement. Such additional amounts so deposited shall become a part of his accumulated contributions, except in the case of disability retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this act, shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the expense fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

Disbursement.

Payment from annuity savings fund.

Transfer to expense fund.

Transfer to annuity reserve fund.

Annuity reserve fund defined.

(2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this act. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

Pension accumulation fund defined.

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

Employer contributions.

(a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and seventy-five one hundredths per centum (3.75%) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provid-



HeinOnline -- 1963 vol. I 662 1963

ed, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative. Provided, further, that for each payroll period after *July 1, 1975,* the employers' contributions shall be three and fifty one hundredths per centum (3.50%). Limitations.

(b) The board of trustees of every school district maintaining an elementary school, or schools, the board of trustees of every school district maintaining a high school, and the board of trustees of every county high school shall, in the respective budgets for such schools, make and provide an appropriation for such payments to the pension accumulation fund. Duty of school trustees to provide appropriation.

(c) When the total amount required for the elementary school budget of any district, including the amount to be paid into the pension accumulation fund will not require a levy against the property in the district in excess of ten (10) mills, no special or additional levy shall be made but the whole amount shall be paid out of the receipts from the levy authorized by section 75-3706. Limitation on levy.

(d) When the total amount required for the elementary school budget for any district, including the amount to be paid into the pension accumulation fund, will require a levy more than ten (10) mills, a special levy against the taxable property in the district must be made in such number of mills as will raise the total amount for the payment to the pension accumulation fund, without being authorized at any election. Special levy.

(e) The total amount to be paid by each high school within each county to the pension accumulation fund shall be raised by a county-wide tax levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that the amount budgeted for payment to the pension accumulation fund in any high school budget shall not be deemed or considered as a part of or as included within the maximums for high school budgets as fixed and determined by section 75-4505, High school levy.



HeinOnline -- 1963 vol. I 663 1963

and the county-wide high school levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-1723, unless the trustees making such budget so desire and the board of county commissioners find that such levy is not required to raise the amount necessary for such budget for all purposes including the payment to the pension accumulation fund.

Legislature shall make appropriation—state institutions.

(f) The legislative assembly shall, in its appropriation for the maintenance and operation of the office of the state superintendent of public instruction, the state orphans home, the Montana state training school, the Montana state deaf and blind school, the state vocational school for girls, and the Montana state industrial school, include and provide appropriations in such an amount as will be sufficient to make such payments into such pension accumulation fund as may be required by reason and on account of such state superintendent of public instruction and such employees of such office and institutions as may be members.

Appropriation from university millage fund.

(g) The legislative assembly shall, in its appropriations for the maintenance and operation of the university of Montana, and its several departments and schools, include and provide appropriations in such an amount as will be sufficient to make such payments into the pension accumulation fund as may be required by reason or on account of such teachers of such university, and its several schools and departments, as may be members; provided that all such appropriations shall be made from the university millage fund or appropriations made by the legislature.

County budget.

(h) The board of county commisisoners of each county shall, in the budget covering appropriations for the maintenance and operation of the office of county superintendent of schools, include and provide such an amount as will be sufficient to make such payments into such pension accumulation fund as may be required by reason and on account of such county superintendent and such other employees of such office as may be members.

Duties of actuary—rate per centum.

(i) On the basis of regular interest and of such mortality and other tables as shall be adopted by the retirement board, the actuary engaged by the retirement board



HeinOnline -- 1963 vol. I 664 1963

to make each valuation required by this act during the period over which the deficiency contributon is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant, which if contributed on the basis of the compensation of such member throughout his entire period of active service, would be sufficient to provide for the payment of any pension payable by the state on his account. The rate per centum so determined shall be known as the 'normal contribution' rate. After the deficiency contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the retirement board and on the basis of regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

"Normal contribution" rate.

(j) Immediately succeeding the first valuation the actuary engaged by the retirement board shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries not dischargeable by the present assets of the pension accumulation fund and the aforesaid normal contribution if made on account of such members during the remainder of their active service. The rate per centum, originally so determined, shall be known as the 'deficiency contribution'. Provided such rates shall not go into effect until the year 1939-40.

Duties of actuary—rate per centum.

"Deficiency contribution."

(k) The total amount payable annually by the state of Montana into the pension accumulation fund shall be not less than the sum of the rates per centum known as the normal contribution rate and the deficiency contribution rate of the total compensation earnable by all members during the preceding school year, provided, however, that the amount of each annual deficiency contribution shall be at least three per centum (3%) greater than the preceding annual deficiency payment, and that the aggre-

Computation—amount payable by state.



HeinOnline -- 1963 vol. I 665 1963

gate payment into the pension accumulation fund shall be sufficient, when combined with the amount in the pension accumulation fund, to provide the pensions payable out of the fund during the current year.

Deficiency contribution discontinued.

(1) The deficiency contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the retirement board, of the total liability of such fund less the present value, computed on the basis of the normal contributions to be received on account of teachers who are at that time members.

Interest and dividends.

(m) All interest and dividends earned on the funds of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, the annuity reserve fund and the pension reserve fund shall be transferred to the respective funds from the pension accumulation fund.

Payment from pension accumulation fund.

(n) All pensions and benefits in lieu thereof, including pensions payable under section 75-2712, with the exception of those payable to members not entitled to prior service credit shall be paid from the pension accumulation fund.

Transfer of teachers' retirement funds.

(o) All moneys and securities to the credit of the public school teachers' retirement salary fund and the public school teachers' permanent fund on the first day of September, nineteen hundred and thirty-seven, shall be paid by the state treasurer into the pension accumulaton fund.

Transfer of surplus or deficit.

(p) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund or the pension reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

Transfer on retirement.

(q) Upon the retirement of a new entrant, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

Pension reserve fund defined.

(4) Pension reserve fund. The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to prior service credit and from which shall be paid such pensions and



HeinOnline -- 1963 vol. I 666 1963

benefits in lieu thereof. Should a member not entitled to prior service credit who has been retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension reserve held on account of his pension shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such a disability beneficiary be reduced as a result of an increase in his earning capacity the amount of annual reduction in his pension shall be paid annually into the pension accumulation fund during the perod of suich reducton.

Expense fund defined.

(5) Expense fund. The expense fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowance and as other benefits provided herein. Contributions shall be made to the expense fund as follows:

Board shall determine annual expense.

(a) The retirement board shall determine annually the amount required to defray such expense in the ensuing fiscal year. There shall be deducted from the compensation of each member by the several employers the sum of one dollar for each year, in addition to all other deductions herein provided, which sum shall be transmitted to the retirement board in the same manner as herein provided for the transmission of other member contributions, and such sums so deducted shall become a part of and be charged to, said expense fund, and shall not become a part of the members' accumulated contributions.

Transfer to expense fund.

(b) The amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid at withdrawal or death shall be transferred to the expense fund.

Expense paid by employers.

(c) The expense not payable by contributions of members and amounts transferred from the annuity savings fund as provided under paragraph (b) of this subsection shall be paid by the employers at a rate fixed by the retirement board not in excess of one per centum (1%) of the earnable compensation of the members for whom the employers make contributions as herein provided.

Approved March 9, 1963.



HeinOnline -- 1963 vol. I 667 1963

## CHAPTER 217

An Act to Amend Section 4-403, R. C. M., 1947, as Amended, Relating to the Issuance of Retail Liquor Licenses; Limiting the Number of Licenses and Lapse and Cancellation of Same; Increasing the Population Figures for Limiting Licenses in Cities, Towns; and Providing for Limited Licenses on Population Basis in Counties.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 4-403, R. C. M., 1947, as amended, is amended to read as follows:

"4-403. **Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.** (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

Retail liquor license—issue.

Determination of number.

Incorporated cities and towns—basis of population—distance limitations.

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to-wit: In incorporated towns of *five hundred (500)* inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than *five hundred (500)* inhabitants and not over *three thousand (3000)* inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, *three (3)* retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional *one thousand (1000)* inhabitants; in incorporated cities of over *three thousand (3000)* inhabitants and within a distance of five (5) miles from the corporate limits thereof, *five (5)* retail liquor licenses for the first *three thousand (3000) inhabitants* and one (1) retail liquor license for each additional *one thousand*



HeinOnline -- 1963 vol. I 668 1963

*five hundred (1500)* inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable *(as to ownership only)* retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

**Renewal.**

**Exception—veterans' or fraternal organization.**

**Limitation on restriction by ordinance.**

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the

**Limitation on number of licenses outside corporate five-mile area.**



HeinOnline -- 1963 vol. I 669 1963

area within a distance of five (5) miles from the corporate limits thereof, shall be *not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county.*

Nonuser—90 days—lapse.

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply."

Exception—seasonal user.

Approved March 9, 1963.

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## CHAPTER 218

An Act to Amend Section 91-4414 of the Revised Codes of Montana, 1947, as Amended by Chapter 105 of the Laws of the Thirty-third Legislative Assembly, 1953, Relating to Exemptions from Inheritance Tax, by Amending Subsection (1) Thereof Relating to Transfers Totally Exempt.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 91-4414 of the Revised Codes of Montana, 1947, as amended by chapter 105 of the laws of the thirty-third legislative assembly, 1953, is amended to read as follows:

Exemptions from first $25,000.

"91-4414. **Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corpo-



HeinOnline -- 1963 vol. I 670 1963

ration and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

Total exemptions.

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, shall be exempt. *All property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the following conditions is present:*

Conditions.

Purpose.

*(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;*

Use in state.

*(b) The property transferred is limited for use within this state;*

Organized under another state.

*(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed:*

No tax imposed.

*(i) The other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;*

Reciprocity of exemption.

*(ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association or-*



HeinOnline -- 1963 vol. I 671 1963

*ganized or existing under the laws of another state of the United States or foreign state or country;*

Hospital for crippled children—free treatment of Montana children.

*(iii) The society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.*

Exemptions to spouses—other relatives

(2) $17,500; $5,000; $2,000 exempt, when. Property of the clear value of seventeen thousand five hundred dollars, transferred to the wife, or five thousand dollars transferred to the husband of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

$500 exemption.

(3) $500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

Property outside state.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 3. This act shall be effective from and after its passage and approval.

Approved March 9, 1963.



HeinOnline -- 1963 vol. I 672 1963

## CHAPTER 219

An Act to Amend Section 32-1626 to Establish the Lewis and Clark Highway from the Idaho-Montana State Line to the North Dakota State Line and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That section 32-1626, Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Lewis and Clark highway—routes defined.

"Section 32-1626. **Lewis and Clark highway—routes comprising.** There is hereby established the Lewis and Clark highway, which shall be composed of the following existing routes: *"Beginning at the Idaho state line west of Lolo Hot Springs, Montana, to the junction of highway ninety-three (93) at Lolo, Montana; thence to Missoula, Montana, on highway ninety-three (93); thence east from Missoula, Montana, on highway twelve (12) and ten (10) to Garrison, Montana; thence from Garrison, Montana, following the route of highway tewlve (12) through Forsyth and Baker, Montana, to the North Dakota state line.*

Repealing clause.

Section 2. *All acts and parts of acts in conflict herewith are hereby repealed.*

Approved March 9, 1963.

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## CHAPTER 220

An Act to Amend Subsection (2) of Section 16-1904, R. C. M., 1947, Which Pertains to the Manner in Which the County Commissioners Shall Fix the Amounts to be Expended for Each Item in the Annual County Budget and Which Provides That the Amount Appropriated and Authorized for Any Budget Item Must Not Exceed by More Than Ten Per Centum (10%) the Amount Actu-



HeinOnline -- 1963 vol. II 673 1963

ally Expended for That Item in the Budget for the Fiscal Year Immediately Preceding; to Provide That the Amount Appropriated and Authorized for Any Budget Item Must Not Exceed by More Than Five Per Centum (5%) the Amount Appropriated and Authorized for Such Budget Item in the Budget for the Fiscal Year Immediately Preceding.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That subsection (2) of section 16-1904, R. C. M., 1947, be and hereby is amended to read as follows:

County commissioners shall estimate funds.

"(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for *each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for* the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further than the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than *five per centum (5%)* the amount *appropriated and authorized* for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emer-

Board shall fix items of budget—specify funds for payment.

Limitations.



HeinOnline -- 1963 vol. II 674 1963

gency warrants and interest thereon, shall not exceed by more than *five per centum (5%)* the total amount *appropriated and authorized* for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding; provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year."

Saving clause.

Section 2. Nothing contained in this act is intended to or should be construed as changing, amending or repealing any portion of subsections (1), (3), (4), (5) and (6) of section 16-1904.

Repealing clause.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1963.

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## CHAPTER 221

An Act Amending Section 92-1401, Revised Codes of Montana, 1947, Enacted as Section 1, Chapter 21, Laws of 1961, to Apply to All Employees Covered by Workmen's Compensation; Repealing Section 92-1405, Revised Codes of Montana, 1947, Enacted as Section 6, Chapter 21, Laws of 1961; and Amending Section 92-1406, Revised Codes of Montana, 1947, Enacted as Section 7, Chapter 21, Laws of 1961, to Provide for an Industrial Accident Rehabilitation Account in the Agency Fund and to Provide for Mandatory Payments to Said Account by Employers Coming Under Plan No. 1 of the Work-



HeinOnline -- 1963 vol. II 675 1963

men's Compensation Act, by Plan No. 2 Insurance Carriers, and by the Industrial Insurance Account in the Agency Fund of the State of Montana.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 92-1401, R. C. M., 1947, enacted as section 1, chapter 21, laws of 1961, is amended to read as follows:

Industrial accident board shall refer disabled workman to vocational rehabilitation division.

"92-1401. **Reference to vocational rehabilitation division of injured workmen.** The industrial accident board of the state of Montana shall refer to the vocational rehabilitation division of the board of education of the state of Montana workmen who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer *enrolled under the workmen's compensation act of the state of Montana* and who in the opinion of said board can be vocationally rehabilitated, and said vocational rehabilitation division shall provide for the vocational rehabilitation of such injured workmen under the provisions of title 41, chapter 8, Revised Codes of Montana, 1947, and amendments thereto."

Repealing clause.

Section 2. Section 92-1405, R. C. M., 1947, enacted as section 6, chapter 21, laws of 1961, is repealed.

Amending clause.

Section 3. Section 92-1406, R. C. M., 1947, enacted as section 7, chapter 21, laws of 1961, is amended to read as follows:

Industrial accident rehabilitation account—

"92-1406. *Industrial accident rehabilitation account. The payments provided in section 92-1403 shall be made from the industrial accident rehabilitation account in the agency fund. Payments to such account shall be made on or before the first day of July of each year as follows:*

Payments.

Employer.

*(1) By each employer operating under the provisions of plan one of the workmen's compensation act, an amount to be assessed by the industrial accident board, not exceeding one per cent (1%) of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year.*

Insurer.

*(2) By each insurer insuring employers under the provisions of plan two of the workmen's compensation act an amount to be assessed by the industrial accident board,*



HeinOnline -- 1963 vol. II 676 1963

*not exceeding one per cent (1%) of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year.*

*(3) By the industrial accident board an amount to be determined by the industrial accident board, not exceeding one per cent (1%) of the compensation paid to injured employees in Montana from the industrial insurance account in the agency fund and the occupational disease account in the agency fund for the preceding fiscal year.* Board.

*Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the agency fund shall be kept for each of the plans. If in any fiscal year, the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.* Separate accounts. Reduced assessment.

*The payments herein provided for shall be made to the industrial accident board which shall credit the sums paid to the said industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the said account shall be made after approval by the division of vocational rehabilitation and upon audit and approval by the state controller and purchasing agent.* Disbursement.

No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the industrial accident board or vocational rehabilitation division.'' Limitation on use.

Approved March 9, 1963.

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## CHAPTER 222

An Act to Amend Section 75 4601, R. C. M., 1947, Providing for the Election of Additional Trustees to the Boards of Trustees of High School Districts; Providing for the Establishment of Trustee Nominating Districts; Containing a Repealing Clause.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 75-4601, R. C. M., 1947, be and the same is hereby amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. II 677 1963

High school trustees—Additional members may be elected.

"75-4601. **High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.** In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request, *such* requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

Number of trustees.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

Limitation.

Trustee nominating districts.

(a) *Following the determination of the number of additional board members to be elected, the county superintendent of schools shall district the territory of the high school district, excluding the common school district wherein the high school is located, into a number of trustee nominating districts equal to the number of additional board members to be elected, and each trustee nominating district so established shall be entitled to one (1) member on the board of trustees of the high school.*

Election.

*The election of the additional trustees shall be held on the first Saturday in April of every year to fill the expired terms of such additional trustees, and the term of office of such additional trustees after the first election of such trustees shall be for three (3) years.*

Qualifications.

*The additional trustees so elected shall be residents of the respective trustee nominating districts established by*



HeinOnline -- 1963 vol. II 678 1963

*the county superintendent of schools, and shall meet the general qualifications for school district trustees provided by section 75-1601, Revised Codes of Montana, 1947.*

Term of office.

*At the first election the additional trustees elected from the trustee nominating districts established by the county superintendent of schools, if there be more than one, shall cast lots to determine the length of time each shall hold office. If there is one (1) additional trustee, he shall hold office for three (3) years. If there are two (2) additional trustees, one shall hold office for three (3) years and one for two (2) years. If there are three (3) additional trustees, one shall hold office for three (3) years, one for two (2) years and one for one (1) year. If there are four (4) additional trustees, two shall hold office for three (3) years, one for two (2) years and one for one (1) year.*

Procedure for election.

*The procedure for calling and holding elections, and for the assumption of office, for the school district wherein the high school is located shall govern the election of the additional trustees herein provided for.*

Nomination.

*At least twenty (20) days preceding the election, any ten (10) electors of any trustee nominating district established as provided for in this act, who are qualified to vote in the election for such additional trustee, shall file with the district clerk of the school district wherein the high school is located the nomination of any qualified person to be a candidate for such trustee from such nominating district.* Ballots.

*Ballots for the election of such additional trustees shall be prepared in the same form and manner as ballots are prepared for other trustees, providing that such ballots for additional trustees shall show clearly the trustee nominating district from which each nominee is a candidate.*

Qualified elector may vote.

*Any qualified elector of any nominating district, excluding the district where the high school is located, may vote for the additional trustees so nominated, at the time and place of the annual election of school trustees in the common school district in which he is entitled to vote, provided that each elector may vote for no more than one such additional trustee from each trustee nominating district.*

Vacancy—appointment.

*A vacancy in the office of additional trustee shall be filled by appointment by the county superintendent of*



HeinOnline -- 1963 vol. II 679 1963

*schools; provided, that such appointment shall be subject to confirmation by a majority of the remaining members of the high school district board including the additional members. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a trustee from the same nominating district for the unexpired term.*

Participation.

(b) The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifyng and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts. Said additional elected members shall be entitled to vote on the selection of the district superintendent of schools.

Board authorized to undertake public works program.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provded for, is hereby authorized to undertake a program of public works in the construction, improvement or repair of buildings, furnishing and equipping the same and purchasing the necessary land therefor, for the use of any or all high schools in such high school district, and to accept funds from the United States, its instrumentalities or any of its

Resolution.

agencies in aid of any one or more of such purposes. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed there-

Petition.

for, such proceedings may also be commenced on petition of thirty per cent (30%) of the qualified electors of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter

Submission to voters.

shall, within sixty (60) days take steps to present the matter asked for in the petition to a vote of the people of the high school district."

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1963.

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## CHAPTER 223

An Act to Amend Section 84-1812, R. C. M., 1947, Relating to Distribution and Use of Proceeds of Gasoline License Tax by Providing That One Per Centum (1%)



HeinOnline -- 1963 vol. II 680 1963

of All Receipts Shall be Deposited and Credited to the State Park Fund, and the Balance Shall be Deposited and Credited, Seventy five Per Centum (75%) to State Highway Fund and Twenty-five Per Centum (25%) to the Gasoline License Drawback Fund, and Providing That the One Per Centum (1%) Deposited and Credited to the State Park Fund be Used for Creation, Improvement, and Maintenance of State Parks Which Are Used for Motor Boating.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 84-1812, R. C. M., 1947, is amended to read as follows: Amending clause.

"84-1812. **Distribution and Use of Proceeds of Tax—Funds.** All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited and *one per centum (1%) of the total amount collected shall be credited to the state park fund and the balance deposited and credited as follows:* Distribution of license tax moneys. State park fund.

*(a) Seventy-five per centum (75%) to the state high way fund.* State highway fund.

*(b) Twenty-five per centum (25%) to a special fund designated as 'the gasoline license drawback fund'.* Gasoline license drawback fund.

*The amount deposited and credited to the state park fund shall be used by the state highway commission for the creation, improvement, and maintenance of state parks wherein motor boating is allowed.* Use of state park fund—motor boating.

The amount deposited in the gasoline license tax drawback fund shall be used for the purpose of making refunds and paying drawbacks as authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state. At the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund. In the event, however, the money in said gasoline license tax drawback fund is insufficient in amount at any time to pay duly authorized and approved refunds or drawbacks, the state treasurer notwithstanding the proportions hereinbefore set out shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such out- Use of drawback fund.



HeinOnline -- 1963 vol. II 681 1963

standing authorized and duly approved refunds or drawbacks.

Use of state highway fund.

All money transferred to the state highway fund shall be used and expended by the state highway commission on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana; provided, that the total cost to the state for administration, dissemination of public information, and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission, which said eight per centum (8%) shall be known as the administrative fund. Provided further that the expenditure for dissemination of public information out of said administrative fund shall not exceed an annual expenditure of one hundred and twenty-six thousand five hundred dollars ($126,500). It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana."

Finding—use of fuel by motor boats.

*The legislature hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than one per centum (1%)*



HeinOnline -- 1963 vol. II 682 1963

*of this fuel is used for purposes of propelling boats on waterways of this state.*

Approved March 9, 1963.

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## CHAPTER 224

An Act to Amend Section 84-1818, R. C. M. 1947, to Remove Gasoline Used in Motor Boats from Entitlement to Refund of Gasoline License Tax.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 84-1818, R. C. M. 1947, is amended to read as follows: Amending clause.

"84-1818. **Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be entitled to said refund or drawback of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town; provided, that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of Refund of gasoline license tax.



HeinOnline -- 1963 vol. II 683 1963

the state of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

Application for refund within 12 months of purchase.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within *twelve (12)* months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board and the state board of examiners, the state auditor shall draw his warrant upon the state treasurer for the amount of such claim and same shall be paid out of the gasoline license tax drawback fund in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

Investigation.

Warrant paid out of gasoline license tax drawback fund.

Board may correct errors.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, after approval by the state board of examiners, as above provided, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained

May require amendment.

May reject fraudulent claim.



HeinOnline -- 1963 vol. II 684 1963

or the affidavit thereto, is wilfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

Claimant shall obtain permit.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

Record of permits.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

Fee.

A fee of one dollar ($1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

Suspension.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

State subdivisions.

(7) All of the subdivisions of the state mentioned herein shall be subject to all of the conditions, rules and regulations applicable to individuals and as such subdivisions can act only by their officers and agents in presenting claims for refund they shall be responsible for and bound by the acts and declarations of such officers and agents.

Seller shall issue invoice.

(8) When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to



HeinOnline -- 1963 vol. II 685 1963

the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

Proof.

Lost invoice—evidence.

Refund paid in six months.

Seller shall retain duplicate invoice one year.

Seller shall obtain permit.

(9) Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefor to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number and the date of issuance. It



HeinOnline -- 1963 vol. II 686 1963

shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollars ($1.00). Such permit must be renewed annually on or before the first day of January, 1956, and each year thereafter, upon such application and fee paid. After the effective date of this act, it shall be unlawful for any person, firm, corporation or association to sell such gasoline upon which a refund may be claimed without a valid permit therefor. If any such person, firm, corporation or association shall sell any such gasoline without being the holder of a valid permit therefor, he shall be punished by a fine of not less than twenty-five dollars ($25.00), or more than two hundred dollars ($200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment."

Record of permits.

Fee.

Annual renewal.

Violation—penalties.

Approved March 9, 1963.

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## CHAPTER 225

An Act Amending Sections 3-103, 41-1603, 78-101, 81-209, 81-1403, 81-2011, 82-1011, 84-702, 92-104, and 94-9825, R. C. M. 1947, to Increase Salaries of Elected and Appointed Officials.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 3-103, R. C. M. 1947, is amended to read as follows:

Amending clause.

"3-103. **Bond, salary, and office of commissioner.** Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office, and shall give a surety company bond in the sum of seven thousand dollars ($7,000.00), conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall recive an annual salary of *not more than ten thousand dollars ($10,000),* payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily

Commissioner of agriculture—oath—bond.

Salary—expenses.



HeinOnline -- 1963 vol. II 687 1963

incurred in the performance of his duties. He shall maintain his office at the state capitol."

Office.

Amending clause.

Section 2. Section 41-1603, R. C. M. 1947, is amended to read as follows:

Term of office—commissioner of labor and industry.

"41-1603. **Commissioner of labor and industry—term—salary—oath—bond.** The term of office of the commissioner of labor and industry appointed at this time shall terminate on March 4, 1953; and, the term of office of the commissioner of labor and industry appointed thereafter shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary of *not more than seven thousand five hundred dollars ($7,500),* payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, article XIX of the Montana Constitution and execute an official bond in the amount of one thousand dollars ($1,000)."

Salary.

Oath.

Bond.

Amending clause.

Section 3. Section 78-101, R. C. M. 1947, is amended to read as follows:

Custodian of capitol.

"78-101. **Custodian of the state capitol.** The head janitor at the state capitol shall be custodian of all state property at the state capitol. Said head janitor and custodian shall be appointed by the governor and shall receive a salary of *not more than six thousand five hundred dollars ($6,500) per year. Should the custodial operations of the state be serviced by a contracting firm this salary shall remain at five thousand four hundred dollars ($5,400)* per year.

Appointment.

Salary.

Amending clause.

Section 4. Section 81-209, R. C. M. 1947, is amended to read as follows:

Commissioner of state lands and investments—salary—expenses.

"81-209. **Salary and compensation.** The salary of the commissioner shall be *not more than ten thousand dollars ($10,000)* per annum, payable monthly. The commissioner of state lands and investments shall be paid actual and necessary expenses while engaged in the performance of official duties outside of the state capitol."

Amending clause.

Section 5. Section 81-1403, R. C. M. 1947, is amended to read as follows:

Governor shall appoint state forester.

"81-1403. **State forester—appointment—compensation—term—assistants—bond.** The governor, by and with the advice and consent of the senate, shall appoint a



HeinOnline -- 1963 vol. II 688 1963

state forester to have general charge of all the state's forests. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall not *be more than ten thousand eighty dollars ($10,080)* per annum, at the discretion of the state land board, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, fire wardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law. He shall give a satisfactory bond to the state of Montana in the sum of ten thousand dollars ($10,000) as a guarantee for the faithful performance of his duties."

Qualifications.

Salary—expenses.

Term.

State forester shall employ personnel.

Approval

Bond.

Section 6. Section 81-2011, R. C. M. 1947, is amended to read as follows:

Amending clause.

"81-2011. **Salary and report of state engineer to board.** The state engineer shall receive a salary of *not more than ten thousand dollars ($10,000)* per annum, payable monthly. *Such expenses shall be paid monthly from the state's general fund and/or from any other fund from which his salary is derived.*"

State engineer—salary—expenses.

Section 7. Section 82-1011, R. C. M. 1947, is amended to read as follows:

Amending clause.

"82-1011. **Salary and expenses.** The salary of the state examiner, for all services rendered in any capacity whatever, shall be *not more than ten thousand dollars ($10,000)* per year, and in addition thereto the state shall

State examiner—salary—expenses.



HeinOnline -- 1963 vol. II 689 1963

pay the necessary office and travel expenses of himself and assistants."

Amending clause.

Section 8. Section 84-702, R. C. M. 1947, is amended to read as follows:

Board of equalization—qualifications.

"84-702. **Qualification and compensation.** The persons to be appointed as members of *the board of equalization* shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto.

Exclusive appointment.

No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other

Full-time office.

state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office.

Salary.

Each member shall receive an annual salary of *not more than ten thousand dollars ($10,000)* payable in equal

Chairman—additional compensation.

monthly installments. *The member elected chairman as provided for in 84-703, R. C. M. 1947, shall receive additional compensation of not more than five hundred dollars ($500) per annum payable in the same manner as the salary.*

Expenses.

He shall also be paid his actual traveling and other expenses when away from the capitol on official business."

Amending clause.

Section 9. Section 92-104, R. C. M. 1947, is amended to read as follows:

Industrial accident board.

"92-104. **Industrial accident board — compensation — terms and salaries.** There is hereby created a board to consist of three (3) members. The commissioner of labor and industry shall be one (1) member, the director of the bureau of vocational rehabilitation shall be one (1)

One member appointed by governor.

member, and one (1) member shall be appointed by the governor, by and with the consent of the senate. The board shall be known as the industrial accident board and shall have the powers, duties, and functions hereinafter conferred.

Term.

The term of office of the appointed member of the board shall be four (4) years and until his successor shall have been appointed and confirmed.

Salary.

Chairman.

He shall receive an annual salary of *not more than ten thousand dollars ($10,000),* payable monthly and shall be



HeinOnline -- 1963 vol. II 690 1963

chairman of the board. The board shall elect one of their own number as treasurer of the board." Treasurer.

Section 10. Section 94-9825, R. C. M. 1947, is amended to read as follows: Amending clause.

"94-9825. **Director and employees—salaries to be paid monthly—approval and auditing.** The board shall appoint a state director of probation and parole, hereinafter referred to as the 'director' who shall appoint, with the approval of the board, an assistant director, probation and parole officers and other employees required to administer the provisions of this act. The director shall receive an annual salary of *not more than eight thousand four hundred dollars ($8,400)* per annum payable monthly, *which shall include compensation for all services rendered as interstate compact administrator.* All other officers and employees of the board shall receive such compensation for their services as may be fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform such duties as are imposed on them by law or by the board. Board shall appoint director of probation and parole. Other personnel. Salaries. Term.

The salaries of all officers and employees of the board shall be paid monthly after such salaries have been approved by the board upon claims therefor." Paid monthly.

Section 11. This act shall be effective from and after February 28, 1963. Effective February 28, 1963.

Approved March 9, 1963.

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## CHAPTER 226

An Act to Provide that Where Any County Has Not Completed the Classification and Appraisal Program as Provided in Section 84-429.7, R.C.M. 1957 [sic], Due to Lack of Funds, County Commissioners May Levy Up to Two Mills (2) in the 1963-64 Fiscal Year to Complete the Program.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. In any county where the board of county commissioners has failed to complete the classification and appraisal as was made its duty in section 84-429.7, Duty of county commissioners—additional levy to complete classification program.



HeinOnline -- 1963 vol. II 691 1963

R. C. M. 1957 [sic], and is unable to do so because of insufficient funds from the levies which were authorized for said purpose under section 84-429.8, R. C. M. 1957 [sic], the board of county commissioners in such county is hereby authorized to levy, and it shall be its duty to so impose a tax upon all property in the county subject to taxation an amount not to exceed two mills (2) in the fiscal year 1963-64, to carry out the provisions of the classification and appraisal program as expeditiously as possible.

Deposit of proceeds—use.

All proceeds from such tax shall be deposited by the county treasurer to the credit of such classification and appraisal fund, and shall be used exclusively for classification and appraisal purposes. Any unexpended balance at the end of any fiscal year shall remain in such fund and shall be available to carry out the provisions of the classification and appraisal program as was provided in section 84-429.7, R. C. M. 1957 [sic]. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required under the classification and appraisal act shall be paid by warrants drawn on said funds on claims approved by said board; the board of county commissioners in any such county coming under the provisions of this act is hereby authorized to declare an emergency and issue such warrants in the manner provided in section 16-1907, R. C. M. 1947.

Warrants.

Emergency.

Limited use of moneys.

Section 2. No moneys collected under the provisions of this act shall be used other than for the purposes as herein provided, and no moneys collected under the provisions of this act shall be diverted in any way to any other funds which may now exist or which may hereafter be created in the county treasurer's office, except that the legislature may modify or repeal the restrictions herein contained. The provisions of this section shall in no way prohibit the deposit of moneys collected under this act to the credit of a classification and appraisal fund already in existence.

Violation—penalties.

Section 3. Any county official who shall violate the provisions of section 2, as regards the diversion or use of funds shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars ($1,000), and in addition may be imprisoned in the state prison for a period not to exceed one year (1).



HeinOnline -- 1963 vol. II 692 1963

Limited construction.

Section 4. The provisions of this act shall in no way be construed to apply to those counties which have completed the classification of all taxable lands, the appraisal of all taxable city and town lots, and the appraisal of all taxable rural and urban improvements.

Effective immediately.

Section 5. This act shall become effective immediately upon its passage and approval.

Approved March 9, 1963.

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## CHAPTER 227

An Act to Amend Section 84-708, R. C. M. 1947, Relating to the Powers and Duties of the State Board of Equalization; Requiring the State Board of Equalization to Call an Annual Meeting of All County Assessors; Providing for Area Schools for Appraisers and Assessors; and Requiring One or More Members of the State Board of Equalization to Visit One Fourth (¼) of the Counties of the State Annually and Visit Each County at Least Once Every Four (4) Years.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 84-708, R. C. M. 1947, is amended to read as follows:

Duty and power of board.

"84-708. **Powers and duties.** It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

Rules and regulations.

(1) To prescribe rules and regulations, not in conflict with the constitution and laws of the state of Montana, to govern county boards of equalization and the assessors of the different counties in the performance of their duties.

Forms.

(2) To prepare and enforce the use of forms in relation to the assessment of property.

Annual assessment—public utilities.

(3) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights-of-way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and



HeinOnline -- 1963 vol. II 693 1963

flumes, and other similar property, constituting a single and continuous property operated in more than one county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis; provided, however, that lots and parcels of real estate not included in right-of-way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right-of-way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situate.

Apportionment.

(4) To transmit to the county clerk of each county its apportionment of all assessments made by such board.

Valuation of taxable property.

(5) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county boards of equalization; change, increase or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

Administration.

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose *shall call an annual meeting of all county assessors to be held at the state capitol and notice shall be given to each county assessor at least ten (10) days before such meeting, and it shall be the duty of all county*

Annual meeting—county assessors.

Duty to attend.



HeinOnline -- 1963 vol. II 694 1963

*assessors to attend and the costs of their attendance shall be paid by the respective counties. Further, the state board of equalization is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the board and the costs of such appraisers and assessors attending shall be borne by the respective counties. Further, the state board shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary, on the campus of Montana state university in cooperation with the bureau of business and economic research and the school of business administration, providing that there are university facilities and authorities available. The board shall notify all assessors and appraisers and county commissioners at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the respective counties. Further, one or more members of the board shall visit at least one fourth (¼) of the counties of the state annually, and shall visit every county in the state at least once in four (4) years to examine the work and methods of county assessors, boards of county commissioners, county boards of equalization, and county treasurers in their assessment and equalization of taxes on all kinds of property within the county.*

Area schools.

Taxing, assessing and appraising school.

Notice to assessors.

Duty to attend.

Annual visitation of counties.

(7) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

Direction—municipal corporations.

(8) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

Enforcement.

(9) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assess-

County attorneys.



HeinOnline -- 1963 vol. II 695 1963

ment of property and other revenue laws, in their respective counties.

Collection.

(10) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the board in such form and upon such blanks as the board shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the board all blanks so transmitted and in every way aid the board in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the board.

Examination of municipal records.

(11) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the board. Upon completion of such inspection and examination the board shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the board to secure the necessary information. A duplicate of such statement shall be filed in the office of the state board of examiners and when approved and allowed shall be paid the same as other expenses of the board. Within sixty days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

Statement of expenses.

Payment.

Liability for delinquency—penalties.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall



HeinOnline -- 1963 vol. II 696 1963

also be subject to such other fines and penalties as prescribed by law.

Information.

(12) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the board to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

Discovery.

(13) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the board shall have authority to investigate and determine.

Depositions.

(14) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the board shall have authority to investigate and determine.

Investigation of evasion.

(15) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

Investigation—other tax systems.

(16) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

Consultation with governor.

(17) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the board, and to furnish the governor such assistance as he may require.

Report to governor and legislature.

(18) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improve-



HeinOnline -- 1963 vol. II 697 1963

ments in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Approved March 9, 1963.

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## CHAPTER 228

An Act to Amend Section 31-135, R. C. M. 1947, to Provide for An Examination for an Applicant for Renewal of an Operator's or Chauffeur's License on a Time Interval Basis; and Providing for an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 31-135, R. C. M. 1947, is amended to read as follows:

Operator's and chauffeur's licenses—issuance.

"Section 31-135. **Licenses issued to operators and chauffeurs.** (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of driver's licenses, and shall make necessary rules and regulations governing such sales. The board shall, upon payment of four dollars ($4), issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall be purchased biennially on or before the operator's or chauffeur's birthday, and shall expire on the anniversary of the date of birth of the operator or chauffeur, two (2) years or less after the date of issue, and shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

Fee.

Photograph.

Signature.



HeinOnline -- 1963 vol. II 698 1963

(b) *The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five year period.*

Examination on renewal.

Exception.

(c) Whenever the board issues an original license to a person under the age of twenty-one (21) years, such license shall be designated and clearly marked as a 'provisional license'. Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

Provisional license.

Suspension.

Provisional renewal.

(d) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time."

More than one license unlawful.

Section 2. This act shall be in full force and effect upon passage and approval.

Effective immediately.

Approved March 9, 1963.

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## CHAPTER 229

An Act to Amend Section 93-302, R. C. M. 1947, to Increase the Number of District Judges in the Fourth Judicial District From Two to Three.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 93-302, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 93-302. **Number of judges.** In each judicial district there must be the following number of judges

Number of district judges.



HeinOnline -- 1963 vol. II 699 1963

of the district court, who must be elected by the qualified voters of the district, and whose term of office must be four (4) years, to wit: In the first, second, eleventh and sixteenth, two judges each, in the thirteenth, *eighth and fourth,* three judges, and, in all other districts, one judge each.

Term.

Governor shall appoint judge of fourth district—term.

On or before *April 1, 1963,* the governor of this state shall designate and appoint a judge of the *fourth* judicial district who shall hold office until the general election to be held during the year *1964,* and until his successor is elected and qualified."

Approved March 9, 1963.

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## CHAPTER 230

An Act to Amend Sections 69-3502 and 69-3505, Revised Codes of Montana, 1947, Relating to Motorboat and Vessel Regulation. Providing for an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 69-3502, Revised Codes of Montana, 1947, as amended, is amended to read as follows:

Definitions.

"Section 69-3502. **Definitions.** As used in this act, unless the context clearly requires a different meaning:

"Vessel."

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H. R. 11078 unless otherwise defined by the fish and game commission of the state of Montana; as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

"Motor boat."

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

"Owner."

(3) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or



HeinOnline -- 1963 vol. II 700 1963

vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

"Waters of this state."

(4) "Waters of this state" means any waters within the territorial limits of this state.

"Person."

(5) "Person" means an individual, partnership, firm, corporation, association or other entity.

"Operate."

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

"Board."

(7) The word "board" shall mean the fish and game commission of the state of Montana *in all sections of this act, except for section 69-3504, in which section the word "board" shall mean the board of equalization of the state of Montana.*"

Amending clause.

Section 2. Section 69-3505, Revised Codes of Montana, 1947, as amended, is amended to read as follows:

Required equipment on board vessel—life preservers.

"Section 69-3505. **Equipment.** Every vessel shall have aboard:

(1) One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the commandant of the United States coast guard in good and serviceable condition for each person on board, provided, in boats under twenty-six (26) feet in length, that any person or persons, twelve (12) years of age or younger, occupying a vessel while such vessel is in motion, shall have a life preserver of a type approved by the commandant of the United States coast guard securely fastened to his or her person.

Light.

(2) When in operation during hours of darkness, a light sufficient to make the motorboat's or vessel's presence and location known to any and all other vessels within a reasonable distance.

Ventilation.

(3) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system which shall be capable



HeinOnline -- 1963 vol. II 701 1963

of removing resulting gases prior to, and during the time such motorboat or vessel is occupied by any person.

Fire extinguisher.

(4) All motorboats shall carry the minimum number of coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

Flame arrester.

*(5) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device.*

Board's authority.

*(6) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.*

Operation forbidden without equipment.

*(7) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof."*

Effective immediately.

Section 3. This act is effective on and after its passage and approval.

Approved March 9, 1963.

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## CHAPTER 231

An Act to Amend Section 89-1001, R. C. M. 1947, to Provide That a Water Commissioner Shall Be Appointed to Distribute Decreed Water Rights by Application of Fifteen Per Cent (15%) of the Owners of the Water Rights Affected, or, Under Certain Circumstances at the Discretion of the Judge of the District Court.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 89-1001, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 702 1963

"Section 89-1001. **Appointment of water commissioners—authority—compensation.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, water course, spring, lake, reservoir, or other source of supply have been determined by a decree or decrees of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent *(15%)* of the water rights affected by the decree or decrees, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties bound by the decree or decrees the waters to which they are entitled, according to their rights as fixed by such decree or decrees, *provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.*

District judge shall appoint water commissioners.

Application.

(2) The state water conservation board or any person or corporation operating under contract with said board, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

Exception. Petition for distribution of stored waters.

(3) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the state water conservation board under provisions of the state water conservation act, chapter 1 of this Title, to be diverted into and through said streams, ditch or extension of ditch, water course, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners

Authority of water commissioners to distribute.



HeinOnline -- 1963 vol. II 703 1963

and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

No interference with decreed water rights.

Compensation—payment by owners and users.

(4) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of decreed, stored and supplemental waters shall pay their proportionate share of such fees and compensation.''

Approved March 9, 1963.

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## CHAPTER 232

An Act Relating to Marriage; Defining Legislative Intent; Defining Marriageable Age; Requiring the Delivery of PreMarital Information to Applicants; Providing for a Uniform Marriage Application Form; Providing for the Issuance of Marriage Licenses; Limiting the Issuance of Licenses Where Applicants Are Under the Influence of Narcotic Drug or Alcohol or Are Failing to Support Lawful Dependents; Providing a Procedure for Objection to the Issuance of Marriage Licenses; Defining the Validity and Invalidity of Marriages Performed in Other States; Amending Section 48-118.1, R. C. M., 1947, to Provide for Testimony Under the Oath of Applicants Seeking a Waiver of the Waiting Period Between Application for and Issuance of a Marriage License; Prohibiting Remarriage Within Six Months After Divorce; and Repealing Sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R. C. M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Intent of this act to promote stability of marriage.

Section 1. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the



HeinOnline -- 1963 vol. II 704 1963

family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

Legal ages for contracting marriage

Section 2. (1) Every male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of sixteen (16) years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

Consent of parent or guardian.

(2) If either of the contracting parties is between the ages of eighteen (18) and twenty-one (21) if a male, or between the ages of sixteen (16) and eighteen (18) if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

District judge—order allowing marriage.

Consent—finding of judge.

(3) A male under the age of eighteen (18) or a female under the age of sixteen (16) may lawfully contract to marry and obtain a marriage license if there is first pro-



HeinOnline -- 1963 vol. II 705 1963

cured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

Form—application for marriage license.

Section 3. The application for a marriage license shall be in form substantially as follows:

This Is A Sworn Statement. If You Make False Statements, You May Be Prosecuted for Perjury or for False Swearing.

State of Montana

County of .....

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the ..... of ..... County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant .....

Signature of Female applicant .....

Evidence of age.

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

Certified copies of decrees or orders.

| From the Male Applicant | From the Female Applicant |
|---|---|
| Full name ..... | Full name ..... |
| ..... Race or Color ..... | ..... Race or Color ..... |
| Usual Residence ..... | Usual Residence ..... |
| Street address or R. F. D. No. ..... | Street address or R. F. D. No. ..... |
| City or town, county, state, country | City or town, county, state, country |



HeinOnline -- 1963 vol. II 706 1963

When did your residence in this county begin? .....
Have there been any interruptions in your residence in this county since that date? .....
Date of birth ..... Age ....
month day year last birthday
Usual occupation .....
Industry or business .....
Place of birth .....
Religious denomination .....
(not compulsory)
Full name of Father .....
..... Race or color .....
Residence .....
Occupation .....
Birthplace .....
Full name of Mother .....
..... Race or color .....
Residence .....
Occupation .....
Birthplace .....
Maiden name of Mother ....
Male applicant affirms this is his ..... marriage.
number
Previous marriages were ended by: ..... ..... .....
Manner date place
..... ..... .....
..... ..... .....
Children by prior marriages .....
Are you presently in default of a legal obligation to support lawful dependent(s)? .....
Are you under the influence of intoxicating liquor or narcotic drug? .....
Your blood relationship to other applicant, if any? .....

When did your residence in this county begin? .....
Have there been any interruptions in your residence in this county since that date? .....
Date of birth ..... Age ....
month day year last birthday
Usual occupation .....
Industry or business .....
Place of birth .....
Religious denomination .....
(not compulsory)
Full name of Father .....
..... Race or color .....
Residence .....
Occupation .....
Birthplace .....
Full name of Mother .....
..... Race or color .....
Residence .....
Occupation .....
Birthplace .....
Maiden name of Mother ....
Female applicant affirms this is her ..... marriage.
number
Previous marriages were ended by: ..... ..... .....
Manner date place
..... ..... .....
..... ..... .....
Children by prior marriages .....
Are you presently in default of a legal obligation to support lawful dependent(s)? .....
Are you under the influence of intoxicating liquor or narcotic drug? .....
Your blood relationship to other applicant, if any? .....



HeinOnline -- 1963 vol. II 707 1963

| | |
|---|---|
| If prior application rejected in another county, state place, reasons and date: | If prior application rejected in another county, state place, reasons and date: |
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |
| Sworn and subscribed to before me this ..... day of ..... A.D., 19..... | |
| ..... | |
| Signature | |
| ..... | ..... |
| Title | Future Address |
| Marriage to take place ..... date | Enter here exact future address after marriage, if known |
| ..... | ..... |
| place (city and county) | street address |
| Application filed ..... date | ..... ..... city or town state |
| License issued ..... date | ..... |

Clerk shall give card to applicants.

Section 4. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

Form.

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that Title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are



HeinOnline -- 1963 vol. II 708 1963

more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

Montana resident.

Section 5. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

Nonresidents.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

No license shall issue to intoxicated person.

Section 6. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

Failure to support lawful dependents.

Section 7. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.



HeinOnline -- 1963 vol. II 709 1963

Clerk shall post notice.

Section 8. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

Petition stating objections.

Order to show cause.

Service by publication.

Jurisdiction of court.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficent, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the

Refusal of license.

Amendment.



HeinOnline -- 1963 vol. II 710 1963

license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license. Five-day waiting period.

Section 9. (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state. Validity.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state. Public policy.

Section 10. Section 48-118.1, R. C. M. 1947, is amended as follows: Amending clause.

"Section 48-118.1. An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstances which, in the opinion of the judge of the district court, warrants special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days*; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license* Court may waive five-day period. Examination.



HeinOnline -- 1963 vol. II 711 1963

Order as evidence.

*should not be withheld by the clerk of the district court for the statutory period.* Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima-facie evidence of his authority to issue the said marriage license within the five (5) day period."

Unlawful to marry within six months after divorce.

Section 11. It is unlawful for any person, who is a party to an action for divorce in any court in this state, or for any Montana resident who is a party to an action for divorce elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void.

Repealing clause.

Section 12. Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R. C. M., 1947, are repealed.

Approved March 9, 1963.

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## CHAPTER 233

An Act Imposing Upon the Father of an Illegitimate Child a Duty of Support; Establishing a Civil Action for the Determination of Parentage of an Illegitimate Child.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Liability of father—child born out of wedlock.

Section 1. **Obligations of the father.** The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonble expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of a child. A child born out of wedlock includes a child born to married woman by a man other than her husband; provided, however, nothing herein contained shall affect the presumptions of legitimacy otherwise provided by statute.

Enforcement—determination of paternity—complaint.

Section 2. **Enforcement.** Paternity may be determined upon the complaint of the mother, child, or the public authority chargeable by law with the support of



HeinOnline -- 1963 vol. II 712 1963

the child. If paternity has been determined, the liabilities of the father may be enforced in the same or other proceedings (1) by the mother, child, or the public authority which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses, and (2) by other persons including private agencies to the extent that they have furnished the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses.

Recovery limited—preceding four years.

Section 3. **Limitation on recovery from the father.** The father's liabilities for past education and necessary support are limited to a period of four years next preceding the commencement of a proceeding.

Limitation—recovery from father's estate.

Section 4. **Limitations on recovery from father's estate.** The obligation of the estate of the father for liabilities under this Act is limited to amounts accrued prior to his death.

District court has continuing jurisdiction—remedies.

Section 5. **Remedies.** The district court has jurisdiction of a proceeding under this Act and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under the Uniform Reciprocal Enforcement of Support Act are available for enforcement of duties of support under this Act.

Paternity trial—after birth.

Section 6. **Time of trial.** If the issue of paternity is raised in a proceeding commenced during the pregnancy of the mother, the trial shall not, without the consent of the alleged father, be held until after the birth or miscarriage but during such delay testimony may be perpetuated according to the laws of this state.

Judgment—payments.

Section 7. **Judgment.** Judgments under this Act may be for periodic payments which may vary in amount. The court may order payments to be made to the mother or to some person, corporation, or agency designated to administer them under the supervision of the court.

Court may require security.

Section 8. **Security.** The court may require the alleged father to give bond or other security for the payment of the judgment.



HeinOnline -- 1963 vol. II 713 1963

Venue.

Section 9. **Venue.** A proceeding under this Act may be brought in the county where the alleged father is present or has property or in the county where the mother resides.

Uniform interpretation.

Section 10. **Uniformity of interpretation.** This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Effective henceforth.

Section 11. **Operation and repeal.** This Act applies to all cases of birth out of wedlock as defined in this Act where birth occurs after this Act takes effect.

Approved March 9, 1963.

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## CHAPTER 234

An Act to Permit the Successor in Interest to the Rights of a Licensed Water Well Contractor Under a Contract for Water Well Construction to Engage in the Water Well Construction Business to the Extent Necessary to Fulfill Said Contractor's Obligations and Providing Conditions Therefor; Amending Section 66-2602, R.C.M., 1946, as Amended, to Permit Compliance with the Examination and Licensing Provisions of the Montana Water Contractor's License Act by Any One Member of a Firm, Copartnership or Association or the Manager of a Corporation; Amending Section 66-2605, R. C. M., 1947, as Amended, to Make Permissive the Exacting of a Fee for Copies of Board Rules and Regulations; and Amending Section 66-2606, R. C. M., 1947, as Amended, to Permit the Temporary Licensing of a Water Well Contractor Prior to Examination for Competency and Providing Conditions Therefor.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Rights of successor to licensed water well contractor's agreement.

Section 1. Upon the transfer, by operation of law, to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making or construction of water wells to the extent necessary to perform the obligations of said



HeinOnline -- 1963 vol. II 714 1963

licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

Supervision.

Section 2. Section 66-2602, R. C. M., 1947, is amended to read as follows:

Amending clause.

"66-2602. **Purpose of the act — definitions — exemptions.** It is the legislative intent and purpose in this enactment to reduce and minimize the waste of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells in Montana and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is hereby deemed and declared to be in the best interest of the public, and the waste of ground water resources through inefficient and/or incompetent operations of drillers or makers of such water wells is hereby prohibited. Further, for the protection of the public and for the conservation of underground water resources, it is deemed necessary that standards be set and maintained to insure that competency in the drilling and making of water wells in this state is obtained.

Intent— preservation of ground water resources.

Declaration of public policy.

For the purposes of this act, 'water well' means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of the same is for the location, diversion, artificial recharge, or acquisition of ground water; provided, however, that the term 'water well' does not include excavations by back-hoe, or otherwise, for recovery and use of surface waters where the depth thereof is twenty-five feet or less; provided further, however, that this term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining or quarrying or for inserting media to repressure oil or natural gas bearing formations or for storing petroleum, natural gas or other products; for the purposes of this act, 'water well contractor' and 'contractor' mean any person, firm, copartnership, association, or corporation, who shall construct a water well upon lands other than his own, for compensation.

"Water well" defined.



HeinOnline -- 1963 vol. II 715 1963

Exceptions.

This act shall not apply to (1) an individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching or agricultural purposes or as his place of abode, or (2) to an individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor."

Amending clause.

Section 3. Section 66-2605, R. C. M., 1947, is amended to read as follows:

Powers and duties of board.

"66-2605. **Powers and duties of the board.** (1) The board has jurisdiction to exercise effectively the authority granted to it by this act.

Regulation.

(2) The board has authority, and it is its duty, to promulgate, publish and enforce reasonable rules and regulations and orders to effectuate the purposes and intent of this act as expressed herein.

Inspection.

(3) The board, or its authorized representative, shall have the power and authority to inspect water wells drilled, or drilling, and shall have access to the same at all reasonable times.

Programming.

(4) The board shall have authority to establish a program, or programs, of training water well drillers or prospective water well drillers and apprentices, the more effectively to carry out the purposes and intent of this act.

Public hearing.

(5) Within one hundred twenty (120) days of the effective date of this act, the board shall organize and conduct a public hearing for the purpose of adopting reasonable rules and regulations for the future conduct

Notice.

of its business. Such hearing shall be had only after at least ten (10) days' printed notice of the same has been given, announcing the hearing, the time, the place and the purpose therefor. Publication shall be made in at

Publication.

least five (5) daily newspapers in this state. Following such hearing, said rules and regulations shall be adopted and compiled in printed form for distribution to interested persons, *for which the board may charge a fee;*

Fee—deposit in water well contractor's examining board fund.

and sums realized from such sales shall be deposited with the treasurer of this state in a special fund to be designated as the 'Water Well Contractor's Examining Board



HeinOnline -- 1963 vol. II 716 1963

Fund,' and the funds therein shall be used for the purpose of paying expenses of the board, and for no other purpose. All sums expended from this fund shall be approved as provided by law. Upon termination of this board, any balance remaining in said fund shall be paid over to the general fund of the state of Montana. All accounts and expenditures of said board shall be certified by the board, approved by the board of examiners of the state of Montana, and paid by the state treasurer upon warrants drawn by the state auditor out of said fund.

(6) The board has authority, and it is its duty, to issue licenses to qualified water well contractors in this state; to cause examination to be made of applicants for licenses; to revoke or suspend licenses upon good cause shown after their issuance, after notice to the person affected and an opportunity for him to be heard; to reinstate licenses previously revoked when justification therefor is shown to the satisfaction of the board; and, generally, to perform any and all duties which will carry out the purposes and intent of this act as expressed herein." Licenses.

Section 4. Section 66-2606, R. C. M., 1947, is amended to read as follows: Amending clause.

"66-2606. **Water well contractor's licenses.** Any person desiring to engage in the drilling, making or construction of one (1) or more wells for underground water in this state shall first file an application with the board for a contractor's license, setting out his qualifications therefor, the equipment proposed to be used in such contracting, and such other business as may be required by the board, all upon forms to be adopted by the board. The board shall charge a fee of one hundred dollars ($100.00) for the filing of such application by any person, and it shall not act upon any application until such fee has been paid. All fees collected hereunder shall be deposited with the state treasurer in the 'Water Well Contractor's Examining Board Fund,' and shall be used to pay expenses of the board as set forth in this act, and for no other purpose. A license to construct water wells shall be issued to any applicant if, in the opinion of the board, such applicant is qualified to conduct water well construction operations. In the granting of such licenses, the board shall have due regard for the interest of the state of Montana in the protection of its underground waters. Applicants Application for license. Fee. Deposit. Qualification.



HeinOnline -- 1963 vol. II 717 1963

for licenses hereunder who have engaged in the business of water well drilling or construction for a period of more than three (3) years prior to the effective date of this act, and who have been bona fide residents of the state of Montana for more than one (1) year preceding the date of application, may, at any time within one (1) year after the effective date of this act make application for license hereunder and payment of the fee of one hundred dollars ($100.00), as herein provided, and the board shall issue a license to any such applicant without examination, when he shall submit evidence, under oath, satisfactory to the board that he is of good character, that he was engaged in the occupation of water well contractor at the time this act became effective, and that his work as such is satisfactory to the board. All other applicants shall be subject to examination as hereinafter provided.

Temporary license.

*A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (1) through (6) set out in section 66-2608, R. C. M., 1947, and who shall have applied for license as provided by this act. Such temporary license shall entitle the holder thereof to engage in the business of drilling, making or construction of water wells until the time of the next ensuing examination given by the board. Upon such applicant's successfully meeting the board's requirements upon such examination, the temporary license shall be returned to the board and a regular license issued. Should the holder of a temporary license fail, after notice of the holding of such examination, to submit himself for examination or to meet the board's requirements, such temporary license shall expire and be returned to the board for cancellation."*

Approved March 9, 1963.

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## CHAPTER 235

An Act to Amend Section 4-332, R. C. M. 1947, Which Is A Part of the Montana Beer Act, Authorizing Issuance of Special Permits to Sell Beer, at the Discretion of the Montana Liquor Control Board, to Posts of Nationally Chartered Veterans' Organizations and to Lodges of Recognized National Fraternal Organizations, Not Other-



HeinOnline -- 1963 vol. II 718 1963

wise Licensed; and to Authorize Issuance of Special Permits to Sell Liquor, at the Discretion of the Montana Liquor Control Board, to Posts of Nationally Chartered Veterans' Organizations and to Lodges of Recognized National Fraternal Organizations, Not Otherwise Licensed.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 4-332, R. C. M. 1947, is amended to read as follows: Amending clause.

"4-332. (2815.35) **Special permits to sell beer—application and issuance—fee.** *(1)* Any fair association or corporation maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto, shall in the discretion of the board be entitled to a special permit to sell beer to the patrons of such exhibition to be consumed within the exhibition enclosure. Special permit to sell beer—exhibitions.

The application of any such association or corporation shall describe the location of such enclosure wherein such exhibition is held, the nature of such exhibition, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided. Application.

The permit issued to such fair association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when exhibitions for which a fee is charged are being held upon such grounds and during the exhibition period described in such application, and for one (1) day thereafter. Limited time.

The permit fee shall be at the rate of ten dollars ($10.00) per day for each day beer is to be sold, or sold but in no event less than the sum of twenty-five dollars ($25.00), hereby fixed as the minimum fee for such permit. Fee.

*(2) Any post of a nationally chartered veteran's organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in Section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their* Veterans' organizations, lodges.



HeinOnline -- 1963 vol. II 719 1963

*guests only, to be consumed within the hall or building of such post or lodge.*

Application.

*The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of five dollars ($5.00).*

Fee.

Limited time.

*The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."*

Veterans' organizations, lodges—special permit to sell liquor.

*Section 2. Special Permits to sell liquor—application and issuance—fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in Section 4-407.1, be entitled to a special permit to sell liquor at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.*

Application.

*The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars ($10.00).*

Fee.

Limited time.

*The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. Such post or lodge must have either a retail license or special permit to sell beer before being entitled to a special permit to sell liquor.*

Must have beer license.

Approved March 9, 1963.

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## CHAPTER 236

An Act Relating to Credit Unions; Creating New Sections To Provide a Comprehensive Revision and Consolidation of The Laws of the State of Montana Relating to



HeinOnline -- 1963 vol. II 720 1963

Credit Unions; Regulating the Incorporation, Formation, Operation and Supervision of the Affairs of Credit Unions; Providing a Saving Clause; and Repealing Title 14, Chapter 1, Revised Codes of Montana, 1947, as Amended, and All Other Acts and Parts of Acts In Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Short Title. This act may be cited as the "Montana Credit Union Act." Title.

Section 2. **Definitions.** As used in this act. (1) The term "credit union" means a cooperative association organized in accordance with the provisions of this act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. Such organizations shall have perpetual succession and shall be organized under and governed solely by the provisions of this act; Definitions— "Credit union."

(2) The term "Department" means the department of banking, state of Montana; and "Department."

(3) The term "Supervisor" means the state examiner, ex officio superintendent of banks, state of Montana. "Supervisor."

Section 3. **Reports, examinations and fees.** Credit unions shall be under the supervision of the Supervisor and shall make financial reports to him as and when he may, require, but at least semiannually. Each credit union shall be subject to a regular examination annually by, and for this purpose shall make its books and records accessible to, any person designated by the Supervisor; except that special examinations may be made more frequently where there is clear and incontrovertible evidence of immediate danger or damage to, or impairment of members' shareholdings. Fees assessed for examinations shall not exceed the following schedule: The first $25,000 of assets to be assessed at $.22 per $100 of assets, the next $75,000 of assets to be assessed at $.20 per $100 of assets, the next $100,000 of assets to be assessed at $.18 per $100 of assets, the next $300,000 of assets to be assessed at $.14 per $100 of assets, the next $500,000 of assets to be assessed at $.10 per $100 of assets, and assets in excess of $1,000,000 shall be assessed at $.03 per $100 of assets. The minimum fee chargeable shall be $17. Credit unions. Financial reports. Annual examination. Fee schedule.



HeinOnline -- 1963 vol. II 721 1963

Articles of incorporation.

Section 4. **Incorporation.** Whenever any number of persons not less than seven (7) who are domiciled in this state shall desire to incorporate a credit union having for its object the conduct and operation of such organization as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyence of real estate and shall include the following:

Name.

(1) The name, which shall not be the same or too closely resembling that in use by any existing corporation established under the laws of the state. The words "credit union" shall form a part of the name and no person, corporation, copartnership, association, or other form of organization shall be entitled to use a name employing said combination of words except as provided in section 8 of this act.

Office.

(2) The principal office, or place of business which shall be within this state.

Term.

(3) The term of existence of the organization, which shall be perpetual.

Par value.

(4) The par value of shares of the credit union, which shall be five dollars ($5) each.

Purpose.

(5) A provision that such credit union shall be organized under this act for the purposes set forth therein.

Subscribers.

(6) The names, occupations and addresses of the subscribers to the articles of incorporation and the number of shares subscribed by each.

Approval by supervisor.

The articles of incorporation shall be presented to the Supervisor with the by-laws of the proposed credit union, and he shall within thirty (30) days of the receipt of said articles of incorporation and by-laws, determine whether they conform with the provisions of this act, and whether or not the organization of the credit union would benefit its members and be consistent with the purposes of this act.

Notification.

Thereupon, the Supervisor shall promptly notify the applicant of his decision. If it is favorable, the Supervisor shall, at the time of issuing such notice, attach his written approval to the articles of incorporation. If it is unfavorable, the Supervisor shall, at the time of issuing such notice, state his reasons therefor.



HeinOnline -- 1963 vol. II 722 1963

Certificate of incorporation.

Said articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation over the great seal of the state of Montana; and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located.

Certified copies as evidence.

Section 5. **Certified copy of articles of incorporation as evidence.** A certified copy of articles of incorporation and certificate of merger, filed in pursuance to this act shall be received in all courts and other places as prima facie evidence of the facts therein stated.

Certificate as evidence.

Section 6. **Evidence of corporate character.** The certificate issued by the secretary of state in pursuance of this act setting forth that the credit union has fully complied with the provisions of this act and is lawfully authorized to transact business in this state shall be admitted in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such credit union, and of its right to transact business in this state excepting in an action prosecuted by the state in the nature of quo warranto.

Form of by-laws.

Section 7. **By-laws.** In order to simplify the organization of credit unions the Supervisor shall from time to time cause to be prepared a form of articles of incorporation and a form of by-laws, consistent with this act, which shall be used by credit union incorporators, and shall be supplied to them on request. At the time of presenting the articles of incorporation the incorporators shall also submit proposed by-laws to the Supervisor for his approval.

Amendment.

The by-laws may be amended in the manner provided therein, except that no amendments thereto shall thereafter become operative until they have been approved by the Supervisor.

Unlawful use of words "credit union."

Section 8. **Restriction on use of words "credit union" in name.** Any person, corporation, copartnership, or association, except corporations doing business as credit unions, or a credit union organized under the provisions of this act, or under the Federal Credit Union Act or except a central organization of credit unions to which all the credit unions in this state shall be eligible and except chapters of credit unions to which all the credit unions



HeinOnline -- 1963 vol. II 723 1963

in given areas shall be eligible, using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise, as conducting business as a credit union, shall be fined no more than five hundred dollars ($500) or imprisoned no more than one year or both; and shall be enjoined from using such words in its name.

Penalties.

Powers enumerated.

Section 9. **Powers.** A credit union shall have perpetual succession in its corporate name during its existence and shall have power:

(1) to make contracts;

(2) to sue and be sued;

(3) to adopt and use a common seal and alter the same at pleasure;

(4) to receive the savings of its members as payment on shares (including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership);

(5) to make loans to members for provident or productive purposes;

(6) to make loans to a cooperative society or other organization having membership in the credit union;

(7) to deposit its funds in state and national banks the accounts of which are insured by the Federal Deposit Insurance Corporation;

(8) to an extent which shall not exceed twenty-five per centum (25%) of its members' shareholdings, invest in the paid-up shares of building and loan associations the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or in loans to and shares of other credit unions, or organizatons of credit unions, or in any investment legal for savings banks or for trust funds in the state;

(9) to borrow money as hereinafter indicated;

10) to own, hold, and dispose of real and personal property only as may be necessary or incidental to its operations;

(11) to issue shares in the name of a minor in such a manner as the by-laws may provide;



HeinOnline -- 1963 vol. II 724 1963

(12) to purchase insurance on the lives of its members in an amount equal to their respective share and loan balances or either or all of them;

(13) to assess charges to members in accordance with the by-laws for failure to meet promptly their obligations to the credit union;

(14) to impress a lien upon the shares, dividends and accumulation of any member to the extent of any loans made to him directly or indirectly, or on which he is co-maker and for any dues or fines payable by him; and

Membership qualification.

Section 10. **Membership.** Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay an initial installment thereon and any such entrance fee as may be provided for in the by-laws. Organizations (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union membership shall be limited to groups having a common bond of occupation or association. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

Meetings.

Section 11. **Membership meetings.** The fiscal year of all credit unions shall end December 31. The regular annual and special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his shareholdings. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose.

Management—board and committee.

Election.

Section 12. **Management.** The business affairs of a credit union shall be managed by a board of not less than five (5) directors, and a credit committee of not less than three (3) members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of three (3) members, one (1) of whom may be a director other than the treasurer. Two (2) members of the supervisory committee shall be elected at the annual members' meeting by and from the members and one (1) member shall be appointed by the board. Any

Vacancy.



HeinOnline -- 1963 vol. II 725 1963

vacancy occurring in the supervisory committee shall be filled by appointment by the board, until successors (in the case of the elected members) elected at the next annual meeting have qualified. All members of the board and of such committees shall hold office for such terms, respectively, as the by-laws may provide; provided that the said terms shall be for not less than one (1) nor more than three (3) years, except that the term of the board's appointee to the supervisory committee shall be for one (1) year. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the Department within ten (10) days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated.

Terms of office.

Record—filing.

Officers—election.

Section 13. **Officers.** At their first meeting after the annual meeting of the members, the directors shall elect a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the credit union. The offices of secretary and treasurer may be held by the same person. All executive officers shall be chosen from among elected directors except that the secretary-treasurer or treasurer (depending on whether or not these offices are combined) may be appointed by the directors from outside the membership of the board of directors, in which case such office shall be designated as an executive office and the person holding such office shall be a member of the board, ex officio, without vote. The duties of the officers shall be as determined by the by-laws, except that the treasurer shall be the general manager of the credit union. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Supervisor, conditioned upon the faithful performance of his trust.

Duties.

Treasurer's bond.

Directors—monthly meeting.

Section 14. **Directors.** The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient

Duties and powers.



HeinOnline -- 1963 vol. II 726 1963

surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Supervisor, and authorize the payment of the premium or premiums therefor from the funds of the credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by an individual; subject to the limitations of this act, determine the interest rates on loans and the maximum amount which may be loaned with or without security to any member; subject to such regulations as may be issued by the Supervisor, authorize an interest refund to members of record at the close of business on December 31 in proportion to the interest paid by them during that year; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. A membership officer appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, any be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the by-laws or the board may require.

Credit committee—meetings.

Section 15. **Credit committee.** The credit committee shall hold such meetings as the business of the credit union may require and not less frequently than once a month to consider applications for loans. Reasonable notice of such meetings shall be given to all members of the committee. No loan shall be made unless it is approved by a majority of the entire committee and by all members of the committee who are present at the meeting at which the application is considered; except that the credit committee may appoint one or more loan officers, and delegate to him or them the power to approve loans within limits prescribed by the committee. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him within seven (7) days of the date of the filing of the application therefor. All loans not ap-

Notice.

Approval of loans.

Loan officers.



HeinOnline -- 1963 vol. II 727 1963

proved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one (1) member of the credit committee may be appointed as a loan officer. Applications for loans shall be made on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required. For the purposes of this section an assignment of shares, or the endorsement of a note shall be deemed security.

Loan forms.

Supervisory committee—examinations—reports.

Section 16. **Supervisory committee.** The supervisory committee shall make or cause to be made, at least quarterly, an examination of the affairs of the credit union, shall make or cause to be made a report of its quarterly examination to the board of directors; shall make or cause to be made an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union; may suspend by a unanimous vote any officer of the credit union, or any member of the credit committee, or of the board of directors, until the next members' meeting, which members' meeting shall be held not less than seven (7) nor more than fourteen (14) days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the shareholders to consider any violation of this act, the certificate of incorporation or the by-laws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by the board of directors. The members shall decide, at a meeting held not less than seven (7) nor more than fourteen (14) days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two (2) years. As used in this section, the term "passbook" shall include any book, statement of account, or other record setting forth the members' transactions with the credit union.

Suspension.

Special meetings.

Suspension of member by board of directors.

Verification—pass books and accounts.

Interest rates.

Section 17. **Rates of interest.** Interest rates on loans made by a credit union shall not exceed one per centum



HeinOnline -- 1963 vol. II 728 1963

(1%) per month on unpaid principal balances, inclusive of all charges incident to making the loan. This rate may also be stated as twelve per centum (12%) simple interest per annum.

Power to borrow.

Section 18. **Power to borrow.** A credit union may borrow from any source in total sum which shall not exceed fifty per centum (50%) of its total assets, after the deduction of the "notes payable account."

Loans to members—limitations.

Section 19. **Loans to members.** A credit union may loan to members. Loans must be for provident or productive purposes and are made subject to the conditions contained in the by-laws. A borrower may repay his loan in whole or in part, during regular business hours on any day the credit union office is open for business and no penalty or minimum charge may be imposed for payments received in advance of schedule or for any loan paid in full prior to the maturity date. Loans to a director or member of the supervisory or credit committee shall not exceed the amount of his holdings in the credit union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the credit union of any member or members pledged as security for the obligation of such director or committee member. No director or member of the supervisory or credit committee shall endorse for borrowers.

Reserve against loss.

Section 20. **Reserves.** Any entrance fee and charges provided by the by-laws and twenty per centum (20%) of the net earnings of each dividend period, before the declaration of any dividends, shall be set aside as a regular reserve against losses on bad loans and such other losses as may be specified in the by-laws in accordance with regulations prescribed under this act. This reserve shall be kept liquid and intact and not loaned out to members; provided, however, that when the regular reserve thus established shall equal ten per centum (10%) of the total amount of members' shareholdings, no further transfer of net earnings to such regular reserve shall be required except that such amounts not in excess of twenty per centum (20%) of the net earnings as may be needed to maintain this ten per centum (10%) ratio shall continue to be transferred. In addition to such regular reserves, special reserves to protect the interest of members shall be established when required (1) by regulation, or (2) in

Limitation.



HeinOnline -- 1963 vol. II 729 1963

any special case when found by the Supervisor to be necessary for that purpose.

Dividends—declaration and ratification.

Section 21. **Dividends.** Annually or semi-annually and after provision for the required reserves, and/or special reserves, the board of directors may declare a dividend to be paid from the remaining net earnings. Such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared. Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten (10) days of that month. As the by-laws may require, dividend declarations made by the board may be subject to ratification by the members at each annual meeting and in the case of dividend declaration for the period ending December 31, the board may recommend this declaration to the members at the annual meeting rather than declaring same.

Expulsion.

Section 22. **Expulsion—withdrawal.** A member may be expelled by a two-thirds (2/3) vote of the members present at a special meeting called to consider the matter but only after an opportunity has been given him to be heard. Any member may wthdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. Payment of any part or all of such accounts to any of the joint tenants or to a minor shall, to the extent of such payment, be valid and discharge the liability of the credit union to all joint tenants, to the minor, parent or guardian in respect to such share account.

Withdrawal.

Refund.

Discharge of liability.

Withdrawal notice.

The credit union may require sixty (60) days notice of intention to withdraw shares. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

General powers—supervisor.

Section 23. **Certain powers of supervisor.** (1) The Supervisor may prescribe rules and regulations for the administration of the act (including, but not by way of



HeinOnline -- 1963 vol. II 730 1963

limitation, the merger, consolidation, and dissolution of credit unions organized under this act).

Merger—approval.

(2) Any credit union may, with the approval of the Supervisor, and in accordance with such uniform rules and regulations as he shall make and promulgate be merged with another credit union, provided the membership of the one credit union is within the field of membership of the other, under the existing certificate of incorporation of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of each such credit union, either at meetings of the members, duly called for such purpose or in writing. All property, property rights and interest of the credit union so merging shall upon such merger be transferred to and vested in the credit union under whose certificate of incorporation the merger is effected without deed, endorsement, or other instrument of transfer, and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose certificate of incorporation the merger is effected, and thereafter the certificate of incorporation of the credit union so merging shall be null and void and it shall cease to exist. Upon payment of the filing fees provided in Section 26 hereof, the Supervisor shall file the certificate of merger with the secretary of state, and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the merged credit union is located. This section shall be construed, whenever possible to permit a credit union incorporated under any other act to merge with one incorporated under this act, or to permit one incorporated under this act to merge with one incorporated under any other act.

Transfer of property, obligations.

Fee—certificate of merger.

Voluntary dissolution—special meeting.

(3) The proposition of voluntary dissolution may be considered at a membership meeting especially called by a four-fifths (4/5) vote of the board of directors of the credit union on a date set by said board for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed with the secretary before such date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each members, or mailed to each member at the address

Notice.



HeinOnline -- 1963 vol. II 731 1963

for such member appearing on the records of the credit union, not more than thirty (30) days and not less than ten (10) days prior to such date. At the same time, a copy of said notice shall also be mailed to the Supervisor.

Approval.

Approval of the proposition for voluntary dissolution shall be by the affirmative vote of a majority of the members, in person or in writing. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Supervisor within five (5) days after the vote is taken, and there shall be included with the affidavits, a list of the names of the directors and officers of the credit union together with their addresses. If the proposition for voluntary dissolution is approved by such vote, the credit union shall thereupon immediately cease to do business except for the purpose of liquidation.

Statement of results—filing.

Suspension or revocation of certificate.

(4) (a) The Supervisor may suspend or revoke the certificate of incorporation of any credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefore, upon his finding that the credit union is bankrupt or insolvent, or has violated any of the provisions of its certificate of incorporation, its by-laws, this act, or any regulations issued thereunder.

Examination—voluntary liquidation.

(b) The Supervisor through such persons as he shall designate, may examine any credit union in voluntary liquidation and, upon his finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may after holding a hearing or giving adequate opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty (60) days within which to comply, and failure to do so shall afford the Supervisor grounds for terminating such voluntary liquidation and place such credit union in involuntary liquidation and appoint a liquidating agent therefor.

Liquidating agent—powers—supervision.

(c) Such liquidating agent shall have power and authority, subject to the control and supervision of the Supervisor and under such rules and regulations as the Supervisor may prescribe,

(i) To receive and take possession of the books, records, assets, and property of every description of the credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all



HeinOnline -- 1963 vol. II 732 1963

bad or doubtful debts, and to sue in his own name or in the name of the credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the credit union;

(ii) To receive, examine, and pass upon all claims against the credit union in liquidation, including claims of members on shares;

(iii) To make distribution and payment to creditors and members as their interests may appear; and

(iv) To execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(d) Subject to the control and supervision of the Supervisor and under such rules and regulations as the Supervisor may prescribe, the liquidating agent of a credit union in involuntary liquidation shall Duties.

(i) Cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three (3) successive weeks in a newspaper of general circulation in the county in which the credit union in liquidation maintained an office for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a credit union in involuntary liquidation is less than $10,000 unless the Supervisor shall find that its books and records do not contain a true and accurate record of its liabilities, he shall declare such credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case;

(ii) From time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such credit union have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be



HeinOnline -- 1963 vol. II 733 1963

barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three (3) months after notice of rejection or disallowance; and

(iii) In a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after sixty (60) days shall have elapsed from the date of his appointment distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

Certificate of dissolution.

(e) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the Supervisor in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the Supervisor shall cancel the certificate of incorporation of such credit union by issuing a certificate of dissolution on form prescribed by him, and file the same with the secretary of state, and a copy thereof shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located; but the corporate existence of the credit union shall continue for a period of three (3) years from the date of such cancellation of its certificate of incorporation, during which period the liquidating agent, or his duly appointed successor, or such persons as the Supervisor shall designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

Filing.

Continued corporate existence—purposes.

Time—destruction of records.

(5) After the expiration of eight (8) years from the date of concellation of the certificate of incorporation of a credit union the Supervisor may, in his discretion, destroy any or all books and records of such credit union in his possession or under his control.

Delegation of authority.

(6) The Supervisor is authorized and empowered to execute any and all functions and perform any and all duties vested in him hereby, through such persons as he shall designate or employ; and he may delegate to any person or persons, including any institution operating



HeinOnline -- 1963 vol. II 734 1963

under the general supervision of the Department, the performance and discharge of any authority, power, or function vested in him by this act.

Authority of officer or employee.

(7) Any officer or employee of the Department is authorized, when designated for the purpose by the Supervisor to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the Department as related to this act.

Supervisor may require bonds.

(8) The Supervisor is authorized, empowered, and directed to require that every person appointed or elected by any credit union to any position requiring the receipt, payment, or custody, of money or other personal property owned by a credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company licensed to do business in the state of Montana. Any such bond or bonds shall be in a form approved by the Supervisor with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Supervisor may determine to be reasonably appropriate or as elsewhere required by this act. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the Supervisor may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Supervisor may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the credit union. The Supervisor may also approve the use of a form of excess coverage bond whereby a credit union may abtain an amount of coverage in excess of the basic surety coverage.

Form.

Amount.

Blanket bond.

Section 24. **Partial invalidity; right to amend.** (1) If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Severability.



HeinOnline -- 1963 vol. II 735 1963

Right to amend.

(2) The right to alter, amend, or repeal this act or any part thereof, or any certificate of incorporation issued pursuant to the provisions of this act, is expressly reserved.

Change of business address.

Section 25. **Change in place of business.** A credit union may change its local business address on written notice to the Supervisor.

Deposit of fees in general fund.

Section 26. **Disposal of fees—fees for filing and recording articles of incorporations.** All fees and expenses collected by the Supervisor from credit unions for examination shall be deposited with the state treasurer for the credit of the general fund. The secretary of state shall charge a flat fee of fifteen dollars ($15) for filing and recording the articles of incorporation of credit unions and issuing the certificate of incorporation thereon, and ten dollars ($10) for filing certificate of merger or dissolution and issuing certificate thereon, which fees shall be in lieu of all other filing fees.

Conversion to federal or state credit union.

Section 27. **Conversion from state to federal credit union and from federal to state credit union. (1) A** state credit union may be converted into a federal credit union under the laws of the United States by complying with the following requirements:

Approval.

(a) The proposition for such conversion shall first be approved by a majority of the directors of the credit union, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty (30) nor less than seven (7) days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members, in person or in writing.

Results of vote—filing.

(b) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Department within ten (10) days after the vote is taken.

Action under federal law.

(c) Promptly after the vote is taken and in no event later than ninety (90) days thereafter, if the proposition



HeinOnline -- 1963 vol. II 736 1963

for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal laws to make it a federal credit union, and within ten (10) days after receipt of the federal credit union certificate of incorporation there shall be filed with the Department a copy of the certificate of incorporation thus issued. Upon such filing the credit union shall cease to be a state credit union.

(d) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of this act. The successor federal credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place. Effect.

(2) (a) A federal credit union, organized under the laws of the United States may be converted into a state credit union by:

(i) Complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being federal credit union, Compliance.

(ii) Filing with the Department proof of such compliance, satisfactory to the Supervisor, and Filing proof.

(iii) Filing with the Department articles of incorporation and by-laws as required by this act. Filing articles and by-laws.

(b) When the Supervisor has been satisfied that all of such requirements, and all other requirements of this act, have been complied with, the Supervisor shall approve the articles of incorporation and by-laws. Upon such approval, the federal credit union shall become a state credit union as of the date it ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Approval.

Section 28. **Application of act.** Nothing contained in this act shall apply to persons or corporations engaged in the business of loaning money under the provisions of the banking, building and loan, and other laws of the state of Montana. This act to apply to and govern only those doing business as credit unions. Limitation on applicability.



HeinOnline -- 1963 vol. II 737 1963

Saving clause.

Section 29. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Repealing clause.

Section 30. **Repeal.** This act expressly repeals Title 14, Chapter 1 of the Revised Codes of Montana, 1947, as amended and all other acts and parts of acts in conflict herewith.

Approved March 9, 1963.

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## CHAPTER 237

An Act Amending Section 84-4907, R. C. M., 1947, Relating to Nonresident Taxpayers Personal Income Tax and Deductions Therefrom; Providing for the Proration of Deductions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 84-4907, R. C. M., 1947, is amended to read as follows:

Nonresident taxpayers—adjusted gross income defined.

"84-4907. **Nonresident taxpayers.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes *the entire amount of* adjusted gross income from sources within this state, but shall not include *income from* annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent *to which the same* shall be a part of income from any business, trade, profession or occupation carried on in this state. *Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state board of equalization.*

Apportionment.

Prorated deductions.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be *prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.*

Effective years.

Section 2. This act is effective as to taxable years ending on and after December 31, 1963.

Approved March 9, 1963.



HeinOnline -- 1963 vol. II 738 1963

## CHAPTER 238

An Act Constituting the Several District Courts, Courts of Conciliation for the Purpose of Protecting the Rights of Children and to Promote and Protect the Family Life and the Institution of Matrimony by Providing a Means for Reconciliation of Spouses and the Amicable Settlement of Domestic and Family Controversies, and Specifically Where Minor Children Are Involved; Defining the Jurisdiction of Said Courts and to Establish Such Courts Which Requires a Determination by the Judge or Judges of the District Whether Such Conciliation Court Is Necessary in Said District; Providing for the Designation of a Judge to Handle Conciliation Cases, Necessary Personnel, and Payment of the Expenses of Said Courts of Conciliation by the Respective Counties in Which Said Court Is Functioning; The Manner of Holding Conferences, Privacy of Hearings, Proceedings and Recommendations; No Fees to Be Charged, the Hearings to Be Informal, Stay of Divorce Proceedings for Not to Exceed Thirty Days to Give the Parties an Opportunity for a Reconciliation Conference, Transfer of Cases to the Conciliation Court When It Appears That the Welfare of Minors Is Going to Be Seriously Affected and Permitting the Jurisdiction of the Conciliation Court Where No Minors Are Involved If It Apears That a Reconciliation May Be Had, Granting the Conciliation Court the Same Powers As a District Court Under the Constitution of the State of Montana, Article 8, Section 1, Section 93-301 to 93-321 Inclusive, Revised Codes of Montana, 1947, and Acts Amendatory and Relating Thereto, Including the Right of Disqualification of Judges of Courts of Conciliation.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. **Manner of citation.** This act may be cited as the "Montana Conciliation Law." Title.

Section 2. (1) **Purposes.** The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies. Purpose.



HeinOnline -- 1963 vol. II 739 1963

Definitions.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

District court shall determine necessity annually.

(3) Applicability of the Law: Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

Jurisdiction—conciliation court.

Section 3. (1) **Exercise of jurisdiction** . Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

Annual designation of judge.

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necesary for the prompt disposition of the business before the court.

Transfer to another judge.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

County budget.

(4) Budget. The provisions of the county budget system, Section 16-1901 to 1911, inclusive, R. C. M. 1947, shall, except as provided by Section 4, Sub-section 9 of this Act, be applicable to expenditures for the Court of Conciliation; provided, however, that the Court may submit to the Board of County Commissioners the information required by Section 16-1901 on or before July 1st of each year.



HeinOnline -- 1963 vol. II 740 1963

Judge may refer matters to conciliation counselor.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

Conferences.

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

Reports and records.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

Duties of probation officer.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

Hearings shall be private.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

Closed court files.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.



HeinOnline -- 1963 vol. II 741 1963

Source of jurisdiction.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Article 8, Section 1, Chapter 3, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliaton court.

Procedure.

Section 4. **Procedure.** (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

Petition.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by affecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

Form.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of .....

| | |
|---|---|
| Upon the petition of ) | Petition for Conciliation |
| ) | (Under the Conciliation |
| ..... ) | Court Law) |
| Petitioner ) | |
| And concerning ) | |
| ..... and ) | |
| ..... ) | |
| Respondents. ) | |

To the Conciliation Court:

Allegations.

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.



HeinOnline -- 1963 vol. II 742 1963

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

Clerk shall provide forms.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jursdiction of the conciliation court.

No fee.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

Notice of hearing.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

Citation.

Place of hearing.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time



HeinOnline -- 1963 vol. II 743 1963

and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

Informal hearing.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientfic experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

Order to preserve marriage.

(10) Orders Effective Time; Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the

Extension of time by consent of parties.

spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Reconciliation agreement.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

Action in abeyance.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

Pendency of action not a bar.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.



HeinOnline -- 1963 vol. II 744 1963

Stay of divorce proceedings—transfer to conciliation court where minors involved.

(12) Stay of Divorce Proceedings—Where Conciliation Petition Filed First. Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage of the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

Discretion of court where no minors involved.

(13) Jurisdicton Where No Minors Involved. Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

Powers of court

Section 5. **Powers of the court.** The conciliation court shall have the same powers as the district court under the constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and Acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

Approved March 9, 1963.



HeinOnline -- 1963 vol. II 745 1963

## CHAPTER 239

An Act to Amend Section 71-222, R. C. M. 1947, Which Concerns Per Capita and Millage Taxes to Be Levied for Support of the County Poor Fund and Which Forbids the Expenditure of Any Part of the County Poor Fund for Maintenance or Improvement of any Building So Long As the Fund Is Needed for Relief or Public Assistance Within the County; to Provide That Expenditures for Maintenance or Improvement of County Buildings Used Directly for Care of the Poor May Be Made Out of Any Monies in the County Poor Fund Where Such Maintenance or Improvement Is Required By Order of the State Board of Health and Approved by the Public Welfare Department; Containing a Repealing Clause.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 71-222, R. C. M. 1947, is amended to read as follows:

Duty to levy for county poor fund.

"71-222. **Per capita and millage taxes to be levied—expenditures—budgets.** It is hereby made the duty of the board of county commissioners in each county to levy the per capita tax of two dollars ($2.00), and the six (6) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

Budget—expenditure.

Sufficiency of budget.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

Copy of preliminary budget—state administrator of public welfare.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of



HeinOnline -- 1963 vol. II 746 1963

public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

Recommendations.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

Examination.

Findings.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

Ascertainment before reimbursement.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; *provided, however, that expenditures for improvement of any county buildings used directly for care of the poor may be made out of any monies in the county poor fund, whether such monies are produced by the per capita tax or the six (6) mill levy provided for in paragraph one of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the state board of health, and, when such expenditure has been approved by the state public welfare department."*

Limitations— use of poor fund.

Exception.



HeinOnline -- 1963 vol. II 747 1963

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1963.

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## CHAPTER 240

An Act Prohibiting the Defense of Sovereign Immunity Where Public Bodies are Insured; Prohibiting the Suggestion of Insurance Coverage In Actions Against Public Bodies, and Providing for the Reduction of Awards to Policy Limits Where Sovereign Immunity Defense Could Have Been Successfully Raised; Repealing All Acts and Parts of Acts In Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Defense of sovereign immunity not available to insurer of governmental agencies.

Section 1. Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

Showing of existence of insurance forbidden.

Reduction to policy limit.

Repealing clause.

Secton 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1963.



HeinOnline -- 1963 vol. II 748 1963

## CHAPTER 241

An Act to Amend Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, By Adding Sections 15-1119 to 15-1130 Both Inclusive, Revised Codes of Montana, 1947; Relating to the Involuntary Winding Up or Dissolution of Private Corporations Created Under the Laws of Montana Upon Complaint By a Shareholder; Providing Judicial Procedure Therefore; Providing the Grounds and Reasons Therefore; Authorizing Appointment of Receiver In Actions Therefore; Providing That Owners of Fifty Per Cent (50%) or More of the Stock of Corporations May Avoid Dissolution by Purchase of Shares of Complaining Stockholder at Fair Cash Value Thereof; Providing for Judicial Determination of the Fair Cash Value of Stock of Corporation; Providing Act Shall Be Liberally Construed; Providing Manner for Winding Up or Dissolving Corporation; Making Act Applicable to Existing Corporations As Well As Those Created Hereafter; Repealing All Acts or Parts of Acts In Conflict Herewith; Amending Section 15-1101, Revised Codes of Montana, 1947; Providing a Severability Clause; and Providing An Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 15-1101 of the Revised Codes of Montana, 1947, is amended to read as follows:

Dissolution of corporation.

"15-1101. **Dissolution of corporations.** A corporation is dissolved:

Expiratoin.

1. By expiration of the time limited by its charter provided its corporate existence is not extended in the manner provided by law; or

Judgment.

2. By a judgment of dissolution in the manner provided by sections 93-6401 to 93-6426, governing quo warranto proceedings and in the manner provided by sections 15-1108 to 15-1114, governing voluntary dissolution of corporations by decree of court; or

Act of legislature.

3. By an act of the legislative assembly; or

Ceasing to transact business.

4. A corporation which has ceased to transact business and which has no assets may likewise be dissolved by the directors in the manner provided by sections 15-1115, to 15-1118.



HeinOnline -- 1963 vol. II 749 1963

Involuntary procedure.

*5. In the manner provided by Sections 15-1119 to 15-1130."*

Amending clause.

Section 2. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Complaint by shareholders.

15-1119. A complaint for the involuntary winding up or dissolution of a corporation (other than banks, public utilities and building and loan associations) may be filed in the district court of any county wherever such corporation maintains an office or does business by the following persons:

1. A shareholder or shareholders who have held not less than twenty-five per cent (25%) of the number of outstanding shares for a period of not less than six (6) months.

2. Any shareholder if the reason for dissolution is that the corporate term has expired, without extension thereof.

Exception.

This act shall not apply to any corporation whose capital stock is offered to the public or to any corporation whose stock is listed on any established stock exchange.

Amending clause.

Section 3. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Dissolution—findings of court.

15-1120. Upon the filing of complaint the court may order involuntary winding up or dissolution of such a corporation when it finds that any one or more of the following reasons exist:

Abandonment.

1. The corporation has abandoned its business for more than one (1) year;

Impairment of power.

2. The corporate powers have been materially impaired by reason of a deadlock between shareholders or between directors;

Mismanagement.

3. The directors or those in control of the corporation have been guilty of fraud or gross mismanagement;

Oppression.

4. The directors of those in control of the corporation have so oppressed the minority stock interests as to make it unfair to refuse dissolution.

Lapse of term.

5. The period for which the corporation was formed has terminated by lapse of time without extension thereof.



HeinOnline -- 1963 vol. II 750 1963

Amending clause.

Section 4. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Intervention.

15-1121. At any time prior to the trial of the action any shareholder or creditor may intervene therein either as a plaintiff or as a defendant.

Amending clause.

Section 5. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Summons—rules of procedure.

15-1122. Summons shall be issued and served as in other civil actions and the rules of procedure and process governing civil actions generally shall apply to complaints filed under the provisions of this act.

Amending clause.

Section 6. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Court may appoint receiver.

15-1123. In such actions, the court may appoint a receiver. The appointment of such receiver shall be made in the manner provided by Sections 93-4402 to 93-4407, Revised Codes of Montana, 1947.

Amending clause.

Section 7. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Avoidance—purchase of shares.

15-1124. In any such suit the holders of fifty per cent (50%) or more of the outstanding shares of the corporation may avoid the appointment of a receiver or the dissolution of the corporation by purchasing, ratably in the proportions of their stock ownership, the shares of stock owned by the complaining shareholders at their fair cash value. Such election shall be made by filing written notice thereof at any time before trial and, if required by the court, by posting a bond fixed by the court in an amount sufficient to protect the rights of said complaining shareholders. Upon filing of such notice the court shall stay the proceeding and shall proceed to ascertain and fix the value of the shares owned by the plaintiffs.

Election—notice—bond.

Stay of proceeding.

Amending clause.

Section 8. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Appraisers to fix value.

15-1125. The court shall appoint three disinterested commissioners to appraise the fair cash value of the shares



HeinOnline -- 1963 vol. II 751 1963

owned by plaintiffs and order the matter referred to the commissioners so appointed for the purpose of ascertaining such value. The commissioners shall meet at a time and place fixed by the court and shall hear the evidence of the parties. In determining fair cash value of such stock the commissioners shall not consider any value or depreciation in value attributable to control or lack of control of the corporation.

Amending clause.

Section 9. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Written award.

15-1126. The award of the commissioners shall be in writing and shall separately state:

Net worth of assets.

(1) The net worth of the assets of the corporation.

Fair cash value of stock.

(2) The fair cash value of plaintiff's stock.

Amending clause.

Section 10. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Notice of election—filing.

Payment.

Effect of purchaser's delinquency.

15-1127. Within 60 days after receiving notice of the award, the stockholders electing to purchase plaintiff's stock shall file such notice of election. Payment shall be made in cash or upon such contractual terms as may be ordered or approved by the court. If the purchasers electing to purchase plaintiff's stock shall refuse to enter into a contract containing terms ordered by the court, which has been approved by the court, or shall fail to deposit the amount of the award with the clerk of court within such period, a decree shall forthwith be entered winding up and dissolving such corporation. If the plaintiff shall refuse to enter into such contract, a decree shall be entered dismissing the action. The decree may be appealed from as a final judgment.

Delivery of stock.

If such deposit is made plaintiff's stock shall be delivered to the clerk of court properly endorsed for transfer, and the court may order the money and stock delivered to the parties entitled thereto.

Amending clause.

Section 11. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Orders—dissolution.

15-1128. The court may make such orders for winding



HeinOnline -- 1963 vol. II 752 1963

up and dissolution of the corporation as justice and equity require, including orders providing for the presentation of claims of creditors, and the barring from participation of creditors and claimants failing to make claims and present proof, as in cases of proceedings for voluntary winding up and dissolution.

Amending clause.

Section 12. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Liberal construction.

15-1129. This act shall be liberally construed in order to achieve substantial justice and safeguard the rights of shareholders and creditors of such corporations.

Amending clause.

Section 13. Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, is amended by adding thereto a new section which shall read and provide as follows:

Application of act.

15-1130. Under the power reserved to the legislature of Montana this act shall apply to all existing corporations as well as to those created hereafter.

Repealing clause.

Section 14. All acts or parts of acts in conflict herewith are repealed.

Severability.

Section 15. If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Effective immediately.

Section 16. This act is effective on its passage and approval.

Approved March 9, 1963.

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## CHAPTER 242

An Act Relating to Printing for the State of Montana, Amending Sections 82-1137 and 82-1138, R. C. M., 1947, Providing Requirements for Responsible Bidders; Providing That State Printing Be Done Within the State If Adequate and Responsible Bidders are Available; and If the Lowest Bid of a Montana Resident Responsi-



HeinOnline -- 1963 vol. II 753 1963

ble Bidder Is Not More Than 2% Higher Than the Lowest Bid of a Nonresident; Providing Penalties for Violations of the Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. That Section 82-1137, R. C. M., 1947, is amended to read as follows:

State printing—requirements.

"82-1137. (260) **State printing — union label** — *requirements of responsibility—state preferences.* All printing for which the state of Montana is chargeable, including reports of state officers, state boards, pamphlets, blanks, letter heads, envelopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, *must be printed within the state of Montana by a responsible bidder, if his bid is not more than 2% higher than the bid of the lowest bidder who is a nonresident of this state; unless local facilities for production of a particular sort of printed matter are not available, and* shall *bear* the label of the branch of the international typographical union, *the allied printing trades council or the amalgamated lithographers of America of the locality* in which they are printed, *except under the following conditions:*

Bids.

Union label.

Nonunion firms—consideration as responsible bidder.

*1. Printing firms not having the use of the said labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:*

Statement of wage rates.

*(a) As a condition to consideration as a responsible bidder printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.*

Collective bargaining agreement.

*(b) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this act.*



HeinOnline -- 1963 vol. II 754 1963

*(c) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this act, but nothing in these provisions shall be construed as exempting such bidders from any provisions of the act, and such bidders shall also be required to conform to all of its provisions."*

Limited construction.

Section 2. That Section 82-1138, R. C. M., 1947, is amended to read as follows:

Amending clause.

"82-1138. (261) **Penalty.** Any officer of the state who shall accept any printed matter, save and except certificates named in the preceding section, for which the state is chargeable, *in whole or in part, or who is found to have had printed matter produced, under conditions other than as set forth in this act,* shall be subject to a fine of fifty dollars for each and every offense."

Violations—penalty.

Section 3. This act shall be in full force and effect from and after the date of its passage and approval.

Effective immediately.

Approved March 9, 1963.

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## CHAPTER 243

An Act to Allow Trainable Mentally Retarded Children to Be Included Within the Responsibility of the Public Schools and Allow School Districts to Provide Special Classes or Services for Such Children; and Amending Sections 75-5001 and 75-5003, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 75-5001, R. C. M. 1947, is amended to read as follows:

Amending clause.

"75-5001. **Special education—mentally** *retarded* **children—physically handicapped children.** Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

Special education defined.

(1) Mentally *retarded* children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three groups as follows: (a) Educable mentally

Mentally retarded children defined.

Educable.



HeinOnline -- 1963 vol. II 755 1963

*retarded.* Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (b) Trainable mentally *retarded.* Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who, for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (c) Custodial mentally *retarded.* Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for the educable *group, and may assume responsibility for the trainable group.*

Trainable.

Custodial.

Responsibility of public schools.

(2) Physically handicapped children are those children who are capable of profiting from the general education program of the public schools, but who need special equipment, special services, and transportation to compensate for such physical handicaps as cardiac, cerebral palsy, or other physical handicaps including inadequate hearing and vision, which makes them unable to profit from the normal education processes without some special provision. Nothing herein shall be construed to interfere with the purpose and function of the school for the deaf and blind in Great Falls."

Physically handicapped children defined.

Exception—school for deaf and blind.

Section 2. Section 75-5003, R. C. M. 1947, is amended to read as follows:

"75-5003. **Local boards of trustees — powers — determination of children requiring special education and the type of education responsibility of state superintendent— reimbursement by state — computation.** The board of trustees in each school district, when it appears that there are not less than ten (10) educable mentally retarded or physically handicapped children in the district, must maintain special classes for educable mentally retarded children or for physically handicaped children, *(and may provide classes for the trainable mentally retarded children,)* or may arrange to use the services of such approved mentally retarded or physically handicapped children's classes as may exist within the state, or may provide transportation services from home to school and return for all handicapped children enrolled in a state approved special education pro-

Special classes.



HeinOnline -- 1963 vol. II 756 1963

gram of such ages *as* it deems wise; provided, that the local board has the right to exclude persons of low intelligence or severe delinquent behavior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in co-operation with appropriate medical, psychiatric and psychological advice listed above. Two (2) or more districts may combine to provide such educational facilities.

Right to exclude.

Determination by state superintendent.

Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally retarded child in such special classes as three (3) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds of such approved transportation and the county shall reimburse the remainder of such approved transportation according to said schedule.

Computation for reimbursement.

Any child who is mentally retarded, or physically handicapped, or both, who is enrolled in a state-approved elementary school special education program which is maintained by a district other than the district in which such child resides, shall be included in the computation of average number belonging to the district maintaining the special education program, according to the provisions herein. The district in which such child resides shall pay to the district where such child attends an amount of tuition based on the tuition rates established in section 75-1630, and such payment shall be made in the manner prescribed by section 75-1630.

Tuition—elementary schools.

Any such child who is enrolled in a state-approved high school special education program which is maintained by a high school located in a county other than the county in which such child resides, shall be included in the computa-

Tuition—high schools.



HeinOnline -- 1963 vol. II 757 1963

tion of the average number belonging to the high school maintaining the special education program, according to the provisions herein. The county in which such child resides shall pay to the high school where such child attends an amount of tuition based on the tuition rates established in section 75-4230, and such payment shall be made in the manner prescribed by section 75-4230.

Exception.

When children are sent to an institution supported solely by funds of the state of Montana the home district or county will not be required to pay tuition for such child."

Effective immediately.

Section 3. This act is effective on its pasage and approval.

Approved March 11, 1963.

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## CHAPTER 244

An Act Relating to the Disposition of Unclaimed Property and Making Uniform the Law With Reference Thereto; Making Provision for Classifying Such Property As Abandoned and Setting Up Provisions of Law for Handling Such Property So As to Protect the Interests of the Original Owners, Relieve the Holders of Annoyance, Expense and Liability, Preclude Multiple Liability, and Preserve Any Windfalls That May Result From Abandonment to The State of Montana; Providing That the Funds Becoming Available to the State Under the Provisions of This Act Shall Be Deposited in The Public School Fund; and Providing Penalties for Violations of This Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Definitions.

Section 1. **Definitions and use of terms.** As used in this act, unless the context otherwise requires:

"Banking organization."

(a) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

"Business association."

(b) "Business association" means any corporation, other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.



HeinOnline -- 1963 vol. II 758 1963

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company engaged in business in this state. "Financial organization."

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act. "Holder."

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities. "Life insurance corporation."

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative. "Owner."

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity. "Person."

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. "Utility."

Section 2. **Property held by banking or financial organizations.** The following property held or owing by a banking or financial organization is presumed abandoned: Abandonment of property held by bank presumed after seven years—

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years: Exceptions.

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or



HeinOnline -- 1963 vol. II 759 1963

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seven (7) years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven (7) years from the date on which the lease or rental period expired.



HeinOnline -- 1963 vol. II 760 1963

Section 3. **Unclaimed funds held by life insurance corporations.**

Unclaimed funds held by life insurance corporations.

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant acording to the records of the corporation.

Last known address.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven (7) years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven (7) years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

"Unclaimed funds" defined— presumptions.

Section 4. **Deposits and refunds held by utilities.** The following funds held or owing by any utility are presumed abandoned:

Deposits and refunds held by utilities.

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the

Deposit abandoned after 7 years.



HeinOnline -- 1963 vol. II 761 1963

person apearing on the records of the utility entitled thereto for more than seven (7) years after the termination of the services for which the deposit or advance payment was made.

Refund abandoned. after 7 years.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the date it became payable in accordance with the final determination or order providing for the refund.

Undistributed dividends— abandoned after 7 years— conditions.

Section 5. **Undistributed dividends and distributions of business associations.** Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven (7) years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

Property held in course of dissolution— abandoned after 2 years.

Section 6. **Property of business associations and banking or financial organizations held in course of dissolution.** All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two (2) years after the date for final distribution, is presumed abandoned.

Trust property— abandoned after 7 years— conditions.

Section 7. **Property held by fiduciaries.** All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another



HeinOnline -- 1963 vol. II 762 1963

person is presumed abandoned unless the owner has, within seven (7) years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by memorandum on file with the fiduciary:

(a) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(b) If it is held by a business association, banking organization, or financial organization doing business in this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by another person.

Property held by courts, public agencies—abandoned after 7 years.

Section 8. **Property held by state courts and public officers and agencies.** All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven (7) years is presumed abandoned.

Other unclaimed personal property—abandoned after 7 years.

Section 9. **Miscellaneous personal property held for another person.** All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned.

Reciprocity.

Section 10. **Reciprocity for property presumed abandoned or escheated under the laws of another state.** If specific property which is subject to the provisions of sections 2, 5, 6, 7 and 9 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:



HeinOnline -- 1963 vol. II 763 1963

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

Report of abandoned property to state treasurer—verification and recitals.

Section 11. **Report of abandoned property.**

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars ($3) or more presumed abandoned under this act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under three dollars ($3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable ,and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this act.

Successor in interest.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.



HeinOnline -- 1963 vol. II 764 1963

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report. Time for filing.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner. Holder shall exercise due diligence to find owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. Verification.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding its effective date. Items included.

Section 12. **Notice and publication of lists of abandoned property.**

(a) Within one hundred twenty (120) days from the filing of the report required by section 11, the state treasurer shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state. Publication of notice.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain: Title of notice.

(1) The names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified. Names and addresses.



HeinOnline -- 1963 vol. II 765 1963

Inquiry to state treasurer.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

Custody of state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

Limit—$25 value.

(c) The state treasurer is not required to publish in such notice any item of less than twenty-five dollars ($25) unless he deems such publication to be in the public interest.

Notice—mailing.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 11, the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

Statement of property.

(1) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

Name and address.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

Custody of state treasurer.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

Payment or delivery of abandoned property. Time.

Section 13. **Payment or delivery of abandoned property.** Every person who has filed a report as provided by section 11 shall within twenty (20) days after the time specified in section 12 for claiming the property from the holder pay or deliver to the state treasurer all aban-



HeinOnline -- 1963 vol. II 766 1963

doned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Verified statement of proof of claim.

Section 14. **Relief from liability by payment or delivery.** Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the state treasurer under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state treasurer pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state treasurer pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state treasurer was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state treasurer shall refund to such holder the amount of such second payment not in excess of the amount paid to the state treasurer under this act.

Custody.

Relief from liability.

Reimbursement to payor.

Refund to payor—second payment.

Section 15. **Income accruing after payment or delivery.** When property is paid or delivered to the state treasurer under this act, the owner is not entitled to receive income or other increments accruing thereafter.

Disposal of income.

Section 16. **Periods of limitation not a bar.** The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim

Periods of limitation no bar.



HeinOnline -- 1963 vol. II 767 1963

for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state treasurer.

State treasurer shall sell abandoned property at public sale.

Section 17. **Sale of abandoned property.**

(a) All abandoned property other than money delivered to the state treasurer under this act shall within one (1) year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

Publication of notice.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

Transfer of title.

(c) The purchaser at any sale conducted by the state treasurer pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

Section 18. **Deposit of funds.**

Proceeds of sale—deposit in public school fund—retention for claims.

(a) All funds received under this act, including the proceeds from the sale of abandoned property under section 17, shall forthwith be deposited by the state treasurer in the public school fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars ($25,000) from which he shall make prompt payment of claims allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with rsepect to each policy or contract



HeinOnline -- 1963 vol. II 768 1963

listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

Deductions.

(b) Before making any deposit to the credit of the public school fund, the state treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

Filing claim.

Section 19. **Claim for abandoned property paid or delivered.** Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

Section 20. **Determination of claims.**

Determination of claim.

(a) The state treasurer shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

Payment.

(b) If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

Civil action—trial de novo.

Section 21. **Judicial action upon determinations.** Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state treasurer or within one hundred eighty (180) days from the filing of the claim if the state treasurer fails to act. The action shall be tried de novo without a jury.

Treasurer may decline delivery.

Section 22. **Election to take payment or delivery.** The state treasurer, after receiving reports of property deemed abandoned pursuant to this act, may decline to



HeinOnline -- 1963 vol. II 769 1963

receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

Treasurer may examine records.

Section 23. **Examination of records.** The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

Treasurer may bring action.

Section 24. **Proceeding to compel delivery of abandoned property.** If any person refuses to deliver property to the state treasurer as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

Penalties.

Section 25. **Penalties.**

(a) Any person who wilfully fails to render any report or perform other duties required under this act shall be punished by a fine of fifty dollars ($50) for each day such report is withheld, but not more than one thousand dollars ($1,000).

(b) Any person who wilfully refuses to pay or deliver abandoned property to the state treasurer as required under this act shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

Rules and regulations—special assistant attorney general.

Section 26. **Rules and regulations.** The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

Effect of laws of other states.

Section 27. **Effect of laws of other states.** This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this act.

Severability.

Section 28. **Severability.** If any provision of this act or the application thereof to any person or circumstances



HeinOnline -- 1963 vol. II 770 1963

is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Uniform interpretation.

Section 29. **Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Title of act.

Section 30. **Short title.** This act may be cited as the "Uniform Disposition of Unclaimed Property Act."

Approved March 11, 1963.

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## CHAPTER 245

An Act to Amend Sections 53-114 and 84-406, R. C. M. 1947, to Provide That All Motor Vehicles Shall Be Assessed for Taxation Purposes on the First Day of January of Each Year.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 53-114, R. C. M. 1947, is amended to read as follows:

Vehicle owner's application for registration to county treasurer.

"53-114. **Application for registration of motor vehicles and payment of license fees thereon.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, executed in quintuplet, which application shall contain:

Required recitals.

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.



HeinOnline -- 1963 vol. II 771 1963

(c) Description of motor vehicle, including make, year model, engine and serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) In case of reregistration, the license number for the preceding year.

(e) Such other information as the registrar of motor vehicles may require.

Assessment must precede filing application.

(2) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

Payment of fee and personal property taxes.

(3) The applicant shall, upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

Treasurer has power to investigate.

Computation of tax.

(4) The amount of taxes on said motor vehicle shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

Vehicles assessable as of January 1.

(5) Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana,



HeinOnline -- 1963 vol. II 772 1963

provided that in no event shall any motor vehicle be the subject to assessment, levy and taxation more than once in each year.

Registration of new vehicles—payment of sales tax.

(6) The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 53-617, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

Treasurer shall stamp application.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: 'taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration.'

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

Authority of registrar.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.''

Amending clause.

Section 2. Section 84-406, R. C. M. 1947, is amended to read as follows:

''84-406. **When assessment to be made—credits must be assessed, how.** (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding, except that such procedure shall not apply to motor vehicles which are required by subdivision (2) hereof to be assessed

Duty of assessor to make annual assessment of property.

Exception.



HeinOnline -- 1963 vol. II 773 1963

as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 84-101, subdivision 6.

Duty to assess motor vehicles.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M. of the first day of January in each year.

Construction.

Nothing herein contained shall relieve the applicant for registration or reregistration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or reregistration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid."

Approved March 11, 1963.

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## CHAPTER 246

An Act to Enable Boards of County Commissioners to Designate Zoning Districts In Certain Areas Lying Outside the Corporate Limits of Cities and Towns, and to Adopt Zoning Regulations for These Zoning Districts, and To Create Zoning Commissions and Zoning Boards of Adjustment for These Districts, and Repealing Sections 11-2710, 11-3852, and 11-3854, R. C. M. 1947, and All Acts and Parts of Acts In Conflict Herewith.

Whereas, continuing growth and economic development of many cities and towns of this state create urbanized use of lands adjoining and surrounding these cities and towns but beyond their incorporated limits, and

Whereas, orderly patterns of use for such lands preserve and increase their value as residential, industrial, agricultural, commercial, recreational or other lands as may be appropriate to their situation, and

Whereas, establishment of reasonable patterns of land



HeinOnline -- 1963 vol. II 774 1963

use and development is more appropriately determined by local consultation and decision than by enactment of the state legislative assembly, and

Whereas, the boards of county commissioners are constituted agencies for local administrative decision within policy limits which are determined by the legislative assembly, and

Whereas, it is the intention of the legislative assembly that the boards of county commissioners shall exercise the police power of the state for the purpose of establishing and administering zoning districts for certain unincorporated suburban lands of the state within the provisions and limitations of this act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Authority given county commissioners to adopt zoning regulations.

Section 1. For the purpose of promoting the health, safety, morals and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to title 11, chapter 38, R. C. M. 1947, the board of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this act.

City-county planning board shall act as zoning commission.

Section 2. The board of county commissioners shall require the city-county planning board to act as a zoning commission to recommend boundaries and appropriate regulations for the various zoning districts. The city-county planning board shall make a written report of its recommendations to the board of county commissioners, but such recommendations shall be advisory only.

Unincorporated portions—zoning by resolution.

Section 3. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3825, R. C. M. 1947, and which portions are contiguous to a city, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

Certain business uses.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings.



HeinOnline -- 1963 vol. II 775 1963

Limited specifications.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

Uniformity.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one (1) district may differ from those in other districts.

Zoning regulations shall be made with comprehensive development plan.

Section 4. The zoning regulations shall be made in accordance with a comprehensive development plan, and shall be designed to lesson congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area, and the zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

Board shall follow procedure.

Section 5. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

Notice of public hearing.

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district

(b) the general character of the proposed zoning regulations

(c) the time and place of the public hearing



HeinOnline -- 1963 vol. II 776 1963

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

Hearing.

(2) At the public hearing the board shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

Review.

(3) After the public hearing the board shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

Resolution of intention.

(4) The board may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

Publication of resolution.

(5) The board shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district

(b) the general character of the proposed zoning regulations

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder

Written protest.

(d) that for thirty (30) days after first publication of this notice the board will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

If no protest in 30 days, board may adopt.

(6) Within thirty (30) days after the expiration of the protest period the board may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if *forty (40) percent of the freeholders* within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

Protest of 40% of freeholders defeats resolution.

One-year limitation.



HeinOnline -- 1963 vol. II 777 1963

Board of adjustment.

Section 6. The board of county commissioners shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act shall provide that the board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this act.

Appointment—term.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years, and removable for cause by the board of county commissioners upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of section 11-2707, R. C. M. 1947.

Duties of board of adjustment.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of



HeinOnline -- 1963 vol. II 778 1963

appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

Stay of proceedings.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

Hearing of appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by his attorney.

Powers of board.

(5) The board of adjustment shall have the following powers:

Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any resolution adopted pursuant thereto.

Special exceptions.

To hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution.

Variance.

To authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done.

Determination.

(6) In exercising the above mentioned powers, the board of adjustment may, in conformity with the provisions of this act, reverse or affirm, wholly or partly,



HeinOnline -- 1963 vol. II 779 1963

or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Required concurring vote.

(7) The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution, or to effect any variation in such resolution.

Appeal to court of record within 30 days.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

Writ of certiorari.

(9) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board and on due cause shown, grant a restraining order.

Return.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Testimony.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of



HeinOnline -- 1963 vol. II 780 1963

the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

Violation—penalties.

Section 7. A violation of this act or any resolution adopted pursuant thereto is hereby declared to be a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six (6) months, or both.

Injunction.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this act, or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

Enforcing officers—permits—fees.

Section 8. The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions, and may provide for the issuance of location or conformance permits and may collect a fee for each such permit, and the proceeds of such fees shall be deposited in the general fund of the county.

Existing use.

Section 9. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued, although such use does not conform to the provisions of such resolution.



HeinOnline -- 1963 vol. II 781 1963

Excepted uses.

Section 10. No resolution, rule or regulation adopted pursuant to the provisions of this act shall prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.

Severability.

Section 11. The provisions of this act shall be severable and, if any of its sections, provisions, exceptions, clauses or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect.

Repealing clause.

Section 12. Sections 11-2710, 11-3852 and 11-3854, R. C. M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed.

Approved March 11, 1963.

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## CHAPTER 247

An Act to Clarify the Advisory Functions and Jurisdiction of City Planning Boards and City-County Planning Boards Under Provisions of Title 11, Chapter 38, R. C. M. 1947, by Amending Sections 11-3801, 11-3803, 11-3808, 11-3810, 11-3813, 11-3818, 11-3820, 11-3824, 11-3825, 11-3828, 11-3830, 11-3831, 11-3833, 11-3834, 11-3840, 11-3842, 11-3843, 11-3844, 11-3845, 11-3846, 11-3847, 11-3848, 11-3851, and 11-3855, R. C. M. 1947; by Adopting a Saving Clause; and by Repealing Sections 11-3832, 11-3835, 11-3836, 11-3837, 11-3838, 11-3839, 11-3852, 11-3854, 11-3856, 11-3857 and 11-3858, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 11-3801, R. C. M. 1947, is amended to read as follows:

City governing body may create planning board—purposes.

"11-3801. **City planning boards or city-county planning boards authorized—purpose of act.** The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their



HeinOnline -- 1963 vol. II 782 1963

citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials." Advisory capacity.

Section 2. Section 11-3803, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3803. **Definitions.** As used in this act: Definitions.

1. 'City' includes incorporated cities and towns. "City."

2. 'City council' means the chief legislative body of a city or incorporated town. "City council."

3. 'Planning board' means a city planning board or a joint city-county planning board. "Planning board."

4. 'Master plan' means a *comprehensive development* plan or any of its parts such as *a* plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters. *The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.* "Master plan."

5. 'Public place' means any tract owned by the state or its subdivisions. "Public place."

6. 'Mayor' means mayor of a city. "Mayor."

7. 'Streets' includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways. "Streets."

8. 'Units of government' means any federal, state, regional, county, city or town. "Units of government."

9. 'Utility' means any facility used in rendering service which the public has a right to demand. "Utility."



HeinOnline -- 1963 vol. II 783 1963

"Person." 10. 'Person' means individual firm, or corporation.

"Governing body." 11. 'Governing body or governing bodies' means the governing body of any governmental unit represented on a planning board.''

"Plat." *12. 'Plat' means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.*

Amending clause. Section 3. Section 11-3808, R. C. M. 1947, is amended to read as follows:

Qualifications of members. ''11-3808. **Citizen members—qualifications.** The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be resident *freeholders* of such city *or jurisdictional area as defined in section 11-3830, R. C. M. 1947.*''

Amending clause. Section 4. Section 11-3810, R. C. M. 1947, is amended to read as follows:

Nine members—appointment. ''11-3810. **City-county planning boards — members — term of officer members.** *1.* A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Three (3) citizen members to be appointed by the board of county commissioners. *The three (3) members must reside outside the city limits but within the jurisdictional area of the planning board.*''

Terms of office. *2.* The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other



HeinOnline -- 1963 vol. II 784 1963

members shall be *two (2)* years, except *that* the terms of the first members appointed *shall* be fixed by agreement and rule of the governing bodies represented on the board for one (1) *or two (2)* years in order *that* a minimum number of terms *shall expire* in any year."

Section 5. Section 11-3813, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3813. **Removal of citizen appointee.** Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee." Removal.

Section 6. Section 11-3818, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3818. **Quorum—official action.** A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of *members of* the board at a regular or properly called special meeting." Quorum—official action.

Section 7. Section 11-3820, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3820. **Expenses while attending conferences in another city, county, or state.** When the planning board determines that it is necessary for members or employees to attend, in another city, county or state a regional or national conference or interview dealing with planning or related problems, the *planning board* may pay the actual expenses of the attending members or employee provided the amount has been made available in the board's appropriation." Board may pay expenses of attending conferences.

Section 8. Section 11-3824, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3824. **Powers and duties.** To effectuate the purpose of this act, the board shall have the power and duty to: Powers and duties of board.

1. Exercise general supervision of and make regulations for the administration of the affairs of the board. Administration.

2. Prescribe uniform rules pertaining to investigations and hearings. Uniform rules.



HeinOnline -- 1963 vol. II 785 1963

Supervision. 3. Supervise the fiscal affairs and responsibilities of the board.

Employees. 4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board, and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

Records. 5. To keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the board.

Recommendations. 6. Make recommendations and an annual report *to any governing bodies* represented on the board concerning the operation of the board and the status of planning within its jurisdiction.

Proposals. 7. Prepare, publish, and distribute reports, *proposed* ordinances *and proposed resolutions* and other material relating to the activities authorized under this act.

Annual budget. 8. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board."

Amending clause. Section 9. Section 11-3825, R. C. M. 1947, is amended to read as follows:

Appropriation. "11-3825. **Funds for operation—tax levy authority.** *1.* After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

Proportion of expenditure. *2.* When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and *may* budget and appropriate the funds necessary for the respective shares thus agreed upon.



HeinOnline -- 1963 vol. II 786 1963

*3.* The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed *one (1)* mill for planning board purposes, *under procedures set forth in title 11, chapter 14, R. C. M. 1947.* Levy.

*4.* When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the *jurisdictional area* as *established pursuant to* section 11-3830, *which lies* outside the limits of *any* incorporated cities and towns*;* and the board of county commissioners may levy on all property located within such planning district a tax not *to exceed one (1)* mill for planning board purposes, *under procedures set forth in title 16, chapter 19, R. C. M. 1947.*" Planning district—levy.

Section 10. Section 11-3828, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3828. **Master plan—policies.** Master plan.

*1. T*o assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of *community* development, the planning board shall prepare a master plan *and* shall serve in an advisory capacity to the local governing bodies establishing *the* planning board.

*2. The planning board* may also *propose* policies for: Proposals.

*a. subdivision plats*

*b. t*he development of public ways, public places, public structures, and public and private utilities.

*c. t*he issuance of improvement location permits on platted and unplatted lands.

*d. t*he laying out and development of public ways and services to platted and unplatted lands."

*3. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under section 11-2706, R. C. M. 1947.* Council may require board to function as zoning commission.

*4. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board but the governing bodies shall not be bound by such recommendations.* Recommendations.



HeinOnline -- 1963 vol. II 787 1963

Amending clause.

Section 11. Section 11-3830, R. C. M. 1947, is amended to read as follows:

"11-3830. *Jurisdictional area.*

Jurisdictional area shall be established by resolution.

*1. The governing bodies represented on a city-county planning board shall by separate resolutions establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits* of the city and such contiguous unincorporated area outside the city as, in the judgment of the *respective governing bodies,* bears reasonable relation to the development of the city. *The jurisdictional area shall not extend more than four and one-half (4½) miles beyond the limits of any city within the jurisdictional area.*

Limitation.

Maps—filing with county clerk.

*2.* The planning board, after approval *of the jurisdictional area* by the *governing bodies,* shall file in the office of the clerk and recorder a map showing the boundaries of *the jurisdictional* area. *The* boundaries may be revised from time to time by *resolutions of the governing bodies.* Such revised boundaries shall be shown upon a map which shall be filed as provided *in this section.* The area included in such map shall constitute the area over which the planning board shall have *advisory* jurisdiction.

Disputed boundaries—determination.

*3.* In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map showing the boundary lines so agreed upon and approved shall be filed as *provided in this section,* and thereafter shall fix the limit of territorial jurisdiction *of* the respective planning boards.

Amending clause.

Section 12. Section 11-3831, R. C. M. 1947, is amended to read as follows:

Contents of master plan enumerated.

"11-3831. **Master plan—contents.** *The planning board shall prepare and propose a* master plan *for the jurisdictional area, which plan* may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material pre-



HeinOnline -- 1963 vol. II 788 1963

senting basic information, locations, extent and character of any of the following:

a. History, population, and physical site conditions;

b. Land use, including the height, area, bulk, location and use of private and public structures and premises;

c. Population densities;

d. Community centers and neighborhood units;

e. Blighted and slum areas;

f. Streets and highways, including bridges, viaducts, subways, park-ways, alleys, and other public ways and places;

g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

h. Flood control and prevention;

i. Public and private utilities, including water, light, heat, communication, and other services;

j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;

k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs:

l. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges, and other public grounds, spaces, and facilities of a recreational nature;

m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

n. Education, including location and extent of schools, colleges, and universities;

o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;

p. Conservation of water, soil, agricultural, and mineral resources;



HeinOnline -- 1963 vol. II 789 1963

q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds."

Amending clause.

Section 13. Section 11-3833, R. C. M. 1947, is amended to read as follows:

"11-3833. **Notice of hearing prior to adoption of master plan.**

Notice of hearing—proposed plan.

*1.* Prior to the *submission* of *the proposed* master plan *to the governing bodies,* the board shall give notice and hold a public hearing on the plan.

Publication.

*2.* At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the *jurisdictional* area a notice of the time and place of the hearing."

Amending clause.

Section 14. Section 11-3834, R. C. M. 1947, is amended to read as follows:

Adoption of master plan—resolutions.

"11-3834. **Resolution adopting master plan and recommending ordinance.** After *consideration of the recommendations and suggestions elicited at the* public hearing, the *planning* board *shall* by resolution *recommend* the *proposed* master plan and *any proposed* ordinances and resolutions *for its implementation* to the governing bodies of the governmental units represented on the board."

Amending clause.

Section 15. Section 11-3840, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 790 1963

"Section 11-3840. *Adoption of master plan*—**policy and pattern of development.** *The governing bodies shall adopt, revise or reject such proposed plan or any of its parts.* After adoption of the master plan the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the: Governing bodies—consideration of master plan.

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

*3. Adoption of subdivision controls;*

*4. Adoption of zoning ordinances or resolutions.*"

Section 16. Section 11-3842, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3842. **Plats of subdivisions—approval by planning board.**

*1. Where a master plan has been approved, the city council may by ordinance require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.* Council may require plats to conform.

*2. Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.* Compliance—approval.

*3.* Nothing herein contained shall be interpreted to *limit* the present powers of the city or county governments, but shall *be* an additional requirement before any plat may be filed of record or entitled to be recorded." Powers not limited.

Section 17. Section 11-3843, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3843. **Application for approval of plat.**



HeinOnline -- 1963 vol. II 791 1963

Application for certificate of approval.

*1.* A person desiring the approval of a plat *involving lands within the corporate limits of the city and covered by said master plan* shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

Hearing—notice.

*2. When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it* shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat."

Amending clause.

Section 18. Section 11-3844, R. C. M. 1947, is amended to read as follows:

Determination of approval—provisions of plat.

"11-3844. **Determination of whether application for approval should be granted.** In determining whether an application for approval shall be *recommended,* the board shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.

2. Coordination with an extension of facilities included in the master plan.

3. Establishment of minimum width, depth, and area of lots within the projected subdivision.

4. Fair allocations of areas for streets, parks, and utilities."

Amending clause.

Section 19. Section 11-3845, R. C. M. 1947, is amended to read as follows:

Planning board shall adopt procedures.

"11-3845. **Regulations governing procedure for application or approval of plats.** The planning board shall adopt and publish written regulations governing the procedure for application *for* approval of plats of the lands within its *advisory* jurisdiction."

Amending clause.

Section 20. Section 11-3846, R. C. M. 1947, is amended to read as follows:

Board shall recommend to city council.

"11-3846. **Approval or disapproval of application** *for* **plat.** After hearing and within forty-five (45) days after application for approval of the plat, the board shall *recommend approval or disapproval to the city council.* If the



HeinOnline -- 1963 vol. II 792 1963

board *recommends disapproval,* it shall set forth its reasons in *a communication to the city council* and provide the applicant with a copy."

Section 21. Section 11-3847, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3847. **Fees.** The *city council shall* establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application. *These fees shall be credited to a fund established by the governing bodies for the planning board.*" Fees—deposit in fund for planning board.

Section 22. Section 11-3848, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3848. **Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by** *city council.* After a master plan and an ordinance containing provisions for subdivision control and the approval of plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands *within the corporate limits of the city and* covered by such master plan and ordinance shall be without legal effect unless approved by the *city council.*" Recording unapproved plat of no effect.

Section 23. Section 11-3851, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3851. **Appeals.** A decision of *a city council rejecting a proposed subdivision plat* may be *reviewed by the district court upon application for a writ of certiorari. The application* shall specify the grounds upon which *it* alleges the illegality of the action *of the city council.*" Appeal to district court—application for writ of certiorari.

Section 24. Section 11-3855, R. C. M. 1947, is amended to read as follows: Amending clause.

"11-3855. **Validation of prior zoning ordinances, rules and regulations.** All zoning ordinances *or resolutions* and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances *or resolutions,* are hereby validated and continued in effect, until amended or repealed by action of the *governing bodies* taken under the authority of this act." Validation clause.



HeinOnline -- 1963 vol. II 793 1963

Saving clause.

Section 25. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Repealing clause.

Section 26. Sections 11-3832, 11-3835, 11-3836, 11-3837. 11-3838, 11-3839, 11-3854, 11-3856, 11-3857, and 11-3858, R. C. M. 1947 are repealed.

Approved March 11, 1963.

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## CHAPTER NO. 248

An Act Relating to Group Life and Health Insurance for State Officers and Employees and Providing for Payroll Deductions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Group insurance plan for state agencies authorized.

Section 1. All departments, bureaus, boards, commissions and agencies of the State of Montana are hereby authorized upon approval by a two-thirds (2/3) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

Payment of premiums.

Construction—existing plans.

Effective immediately.

Section 2. This act shall become effective upon its passage and approval.

Approved March 11, 1963.



HeinOnline -- 1963 vol. II 794 1963

## CHAPTER NO. 249

An Act Amending Section 44-213, Revised Codes of Montana, 1947, to Allow City and County Governments to Contract With the State Board of Education of Montana to Establish Joint or Regional Libraries; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 44-213 of the Revised Codes of Montana, 1947, is amended to read as follows:

Governmental units may participate in joint county or regional library.

"44-213. Participation of other governmental units. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. *The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.*"

Retention of title to property.

Transfer.

State board of education may contract for joint library facilities.



HeinOnline -- 1963 vol. II 795 1963

Effective immediately.

Section 2. This act is effective on its passage and approval.

Approved March 11, 1963.

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## CHAPTER NO. 250

An Act Providing for the Application, Qualifications, Bonding, Licensing, Supervision and Regulation of Real Estate Brokers and Real Estate Salesmen; Providing for the Collection and Disposition of Fees; Providing for a State Real Estate Commission and Defining its Powers and Duties; Providing Reciprocity of Licenses, Examination and Consent to Suit by Nonresidents; Providing Grounds for Denial, Revocation or Suspension of Licenses; Providing Hearing Procedure; Providing for Appeals From Decisions of the Commission and District Court; Prescribing Fees and Their Disposal; Providing Penalties for the Violation of This Act or of any Rule or Regulation Issued by the Commission; Containing a Severability Clause; Repealing Sections 66-1901 Through and Including 66-1923, Revised Codes of Montana, 1947, as Amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; Providing Section 94-1822 of the Revised Codes of Montana of 1947 shall Not be Amended, Modified, or Repealed by This Act; and Containing an Effective Date for This Act; and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Title—Real Estate License Act—real estate broker or salesman must be licensed.

Section 1. **Title—license required.** This act shall be known and may be cited as the real estate license act of 1963. From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, as provided in this act.



HeinOnline -- 1963 vol. II 796 1963

Section 2. **Definitions.** As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended: Definitions.

(a) The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere. "Real estate."

(b) The term "broker" shall include any person or organization who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any person or organization employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both. "Broker."

(c) The term "salesman" shall include any person who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate. "Salesman."

(d) The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic. "Person."

(e) The term "he" shall mean and include "she" and "it". The term "his" shall mean and include "her" and "its". Meaning of terms.



HeinOnline -- 1963 vol. II 797 1963

Single act.

Section 3. **Exempted classes.** A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign and domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons, and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

Exemptions.

Section 4. **Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.**

Real estate commission created—qualifications—chairman.

(a) There is hereby created the Montana real estate commission, hereinafter referred to as the "commission", to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each of whom shall be a resident of this state, at least



HeinOnline -- 1963 vol. II 798 1963

two of whom shall be active and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Appointment by governor.

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be for four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

Terms of office

Vacancy.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees, and to make such other expen-

Record of proceedings—duties of chairman.

Employees.



HeinOnline -- 1963 vol. II 799 1963

Office.

ditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

Compensation—per diem and expenses.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents ($7.50) and his actual and necessary expenses incurred in the performance of any other duties provided for by the commission.

Seal—evidence—public inspection.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

Fees—deposit—apportionment.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five per cent (5%) from each examination fee and twelve and one-half per cent (12½%) from all other fees collected shall be deposited to the credit of the general fund of the state to reimburse the state for its costs in administering this act.

Expenditures—warrants—accounting.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall



HeinOnline -- 1963 vol. II 800 1963

show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

Power to order disbursements.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

Rules and regulations.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

Transfer of excess funds.

Section 5. **Disposition of excess over $7,500.00.** All moneys, investments and credits in excess of seven thousand five hundred dollars ($7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

Section 6. **Licenses—applicants for licenses.**

Licenses granted.

(a) Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

Qualifications—broker's license.

(b) Each applicant for a broker's license shall be a citizen of the United States, at least twenty-one (21) years of age, and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Every officer of a corporation acting as a broker and every member of an association or partnership acting as a broker shall obtain a broker's license.



HeinOnline -- 1963 vol. II 801 1963

Qualifications—salesman's license.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

Section 7. **Written examination—contents—time and place—exemptions.**

Written examination of applicants.

(a) In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission.

Time—place.

The examination shall be given at least once each six months and at such places within the state as

Required subjects.

the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further

Exceptions.

examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this state may, upon complying with the other requirements for a broker's license, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.



HeinOnline -- 1963 vol. II 802 1963

Section 8. **License—issuance—suspension—revocation.** The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

Power to regulate licenses.

Section 9. **License—delivery—display—pocket card.** The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

Form—delivery—custody.

Duty to display.

Pocket cards.

Section 10. **Bond of brokers and salesman.** No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars ($10,000.00), running to the state of Montana and executed by a surety company duly authorized to do business in the state of Montana. The bond shall be in a form approved by the commission and conditioned that the applicant shall conduct his business and himself in accordance with the provisions of this act. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission.

Bond must be filed.

Section 11. **Fees—when due.** To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

Fee schedule—deposit.

(a) For each examination, a fee not to exceed fifty dollars ($50.00).

(b) For each original resident broker's license issued, a fee not to exceed fifty dollars ($50.00).



HeinOnline -- 1963 vol. II 803 1963

(c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars ($50.00).

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars ($50.00).

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars ($25.00).

(g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars ($25.00).

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars ($25.00).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars ($25.00).

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section.

Revision of fees.

The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

Annual fees due in December.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

Section 12. **Requirements for office—employment of salesmen—issuance and display of license.**



HeinOnline -- 1963 vol. II 804 1963

Broker shall maintain fixed office.

(a) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

Notice of change.

Salesman limited to one broker.

(b) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman. Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return his license and pocket card, and a new license and pocket card shall thereupon be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

Notice of change.

Surrender on termination.

One license limit.

(c) Only one license shall be issued to any salesman to be in effect at one time.

Section 13. **Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.**

Unlawful employment.

(a) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or



HeinOnline -- 1963 vol. II 805 1963

commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

Nonresident broker.

(b) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

Reciprocity.

Consent to jurisdiction and service of process.

(c) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no

Method of service.

Default.



HeinOnline -- 1963 vol. II 806 1963

default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had; provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947. (Rule 4, M.R. Civ. P.)

Section 14. **Grounds for refusal—suspension or revocation of license.** The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

Commission may refuse, suspend, or revoke license for cause.

Unlawful practices.

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

Enumerated.

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;



HeinOnline -- 1963 vol. II 807 1963

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission or compensation to any person for performing the services of a real estate broker or real estate salesman who has not first secured his license under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;



HeinOnline -- 1963 vol. II 808 1963

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him by any person with him as a representative of his registered broker;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony.

Section 15. **Hearings—procedures.**

Hearing.

(a) Before the commission shall deny any application for a license or revoke or suspend a license, the applicant or licensee shall be entitled to a hearing. The hearing shall be held after twenty (20) days notice to the applicant or licensee. In case of filing of charges against a licensee, a copy of such charges shall be attached to the notice and be sent by registered mail to the last known address of the licensee. The licensee shall file an answer to the charges, in triplicate, within twenty (20) days after notice has been mailed by the commission. The commission shall thereupon notify the parties to the dispute of the time and place of hearing, which shall be held in accordance with rules promulgated by the commission and in conformity with the laws of this state. If the applicant or license holder is a salesman, the commission shall also notify the broker employing him or in whose employ he seeks to enter by mailing such a notice to the broker's last known business address.

Notice of charges.

Answer.

Notice of hearing.

Authority to be heard.

(b) The applicant or licensee shall have full authority to be heard in person or by counsel before the commission in reference to the denial of application on charges filed against him.

Powers of chairman—conduct of hearing.

(c) In the preparation and conduct of such hearing, the chairman shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers or books. He may administer oaths, examine the witnesses and take any evidence he deems pertinent to the determination of the charges. Any witness so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and

Subpoena—witness fees and mileage.



HeinOnline -- 1963 vol. II 809 1963

mileage must be paid out of and kept within the limits of the funds created from such license fees. The party against whom such charges may be filed shall have the right to obtain from the chairman a subpoena for any witnesses whom he may desire at such hearing. The chairman shall issue such subpoenas as desired by the party against whom the charges have been filed. Depositions may also be taken and used as in civil court cases in the district courts.

Depositions.

Enforcement.

(d) Where, in any proceeding before the commission, any witness shall fail or refuse to attend upon the subpoena issued, or shall refuse to testify, or shall refuse to produce any records or documents, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony, and the production of the documents and records may be enforced in the same manner as courts of competent jurisdiction enforce the attendance, testimony of witnesses and production of records in civil cases in the courts of this state.

Section 16. **Appeal to court—supersedeas—bond.**

Appeal to district court.

(a) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

Notice of appeal—writ of certiorari.

(b) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

Hearing without jury.

Appeal bond.

(c) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars



HeinOnline -- 1963 vol. II 810 1963

($300.00) for the payment of any costs which may be taxed against him.

Additional evidence.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

Appeal to supreme court.

(e) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling, order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on appeal, shall be governed by chapter 80 of title 93, Revised Codes of Montana, 1947.

Stay of proceedings.

(f) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

Violations—penalties.

Section 17. **Penalties—legal actions.**

(a) Any person acting as a broker or salesman without first obtaining a license shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars ($500.00) or more than two thousand dollars ($2,000.00)



HeinOnline -- 1963 vol. II 811 1963

or by imprisonment for a term not to exceed six (6) months, or both.

Civil actions—penalty.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

Right to sue—attorney's fees. allowed.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 14 herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

Collection from bonds.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 10 of this act.

Proof of license required to bring action.

Section 18. **Action for compensation.** Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action or claim arose.

Members of company must procure licenses.

Section 19. **Members of company—license required.** Every member or officer of each partnership, association



HeinOnline -- 1963 vol. II 812 1963

or corporation, who actively participates in the real estate brokerage business of such partnership, association or corporation, shall obtain a license as a real estate broker and every employee, who acts as a salesman for such partnership, association or corporation, shall hold a license as a real estate salesman.

Section 20. **Real estate meetings and clinics open to all licensees.**

Real estate clinics.

(a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

Education.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

Attorney for commission.

Section 21. **Attorney for commission.** The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for the said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

Payment of fees and expenses.

Annual directory.

Section 22. **Publication of directory.** The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

Severability.

Section 23. **Unconstitutionality—severability.** If any provision of this act is held invalid, that provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not affect the application of such provision to such persons or circumstances other than those to which it is held invalid.



HeinOnline -- 1963 vol. II 813 1963

Repealing clause.

Section 24. **Repealing clause.** This act expressly repeals sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by chapter 129, laws of 1957, chapter 130, laws of 1957, chapter 131, laws of 1957 and chapter 132, laws of 1957.

Construction.

Section 25. **No repeal of section 94-1822.** Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

Effective immediately.

Section 26. **Effective date.** This act shall be in full force and effect from and after its passage and approval.

Repealing clause.

Section 27. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1963.

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## CHAPTER 251

An Act to Amend Section 75-1630, R. C. M. 1947, Relating to School Attendance in Districts Other Than That of Residence and Providing for Disapproval if There Is Not Sufficient Room.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-1630, R. C. M. 1947, is amended to read as follows:

School attendance outside place of residence.

"75-1630. **Transfer of funds.** Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

Written permission—conditions.



HeinOnline -- 1963 vol. II 814 1963

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

**Board may disapprove attendance.**

*If the board of trustees of the district to be attended shall find that, due to insufficient room and overcrowding the accreditation of the receiving school in the ensuing school year would be adversely affected by acceptance of a transfer pupil from another school district, the board may disapprove the attendance provided it mails written notice of disapproval to the parents or guardian of the*



HeinOnline -- 1963 vol. II 815 1963

*pupil within fifteen (15) days after written notification by the county superintendent of the proposed attendance.*

Determination of residence.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two counties by the county superintendents of such counties, to finally determine the residence of such child.

Tuition.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred twenty-five dollars ($225); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars ($200); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars ($175) per pupil.

Budget.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Application.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend.

Record of attendance.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days



HeinOnline -- 1963 vol. II 816 1963

attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

Reimbursement.

Waiver.

No reduction in school foundation program.

Application of tuition.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

Levy without vote.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Determination of eligibility.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition pay-

Attendance outside state—reciprocity—tuition.



HeinOnline -- 1963 vol. II 817 1963

ments, which may either be on a per pupil basis of a flat amount or on an actual cost basis."

Approved March 9, 1963.

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## CHAPTER 252

An Act Relating to the Acquisition, Erection, Equipment, Enlargement and Improvement of Housing and Other Revenue-Producing Facilities at Units of the University of Montana, and the Borrowing of Funds Therefor by the Regents by the Issuance and Sale of Negotiable Bonds and Other Securities and the Making of Purchases on Time, Payable Solely from Net Income from Rents and Board, Receipts from Charges, Admissions or Fees for the Facilities, and Gifts, Contributions and Grants of Funds, Without Obligating the State of Montana or Using State Funds Except as Provided, and the Provision of Security for Such Borrowing, and the Refunding of Outstanding Obligations; Repealing Sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Authority of regents—revenue producing facilities at university units—buildings.

Section 1. **Revenue-producing facilities at units of the university of Montana.** The regents of the university of Montana may:

(1) Acquire, erect, equip, enlarge and improve, at any unit of the university of Montana, any of the following types of revenue-producing facilities: residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union buildings and facilities.

Rentals and service.

(2) Rent housing facilities and provide food and other services to the students, officers, guests and employees of the unit at rates that will insure a reasonable net income over operating expenses and will provide for debt service and reserves, and provide for the collection of charges, admissions and fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes



HeinOnline -- 1963 vol. II 818 1963

of Montana, 1947, and may be collected from any or all students.

(3) Hold the net income derived from the operation of such facilities and devote it to debt service and reserves, repairs, replacements and betterments of the facilities or, so far as such net revenues have not been obligated, to the acquisition, erection, equipping, enlarging or improvement of additional facilities of the types described in this section. Use of net income.

(4) Exercise full control and complete management of such facilities. Management.

Section 2. **Title to facilities.** The title to all real estate and improvements acquired and erected under the provisions of this chapter shall be taken and held in the name of the state of Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid. Title in state.

Section 3. **Borrowing by regents.** In carrying out the above powers, the regents may:

(1) Borrow money for any purpose or purposes stated in this chapter, including, if deemed desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest. Regents may borrow money.

(2) Make purchases on a time or installment basis. Time purchase.

(3) Issue bonds, notes and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds, or bonds registered as to ownership of principal only. Issue of securities.

(4) Pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes or other securities authorized in this chapter or otherwise obligate: Pledges.

(a) The net income received from rents, board or both in housing, food service and other facilities.



HeinOnline -- 1963 vol. II 819 1963

(b) Receipts from student building, activity, union and other special fees prescribed by the regents for all students.

(c) Other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property, receipts from athletic contests and collections of admissions and other charges for the use of facilities.

Payments.

(5) Make payments on loans or purchases from any other available income not obligated for such purposes, including receipts from sales of materials, equipment and fixtures of such facilities, or from sale of the facilities themselves other than land.

Security by trust agreements.

(6) Secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana, or by a resolution establishing covenants of the regents with the holders of such bonds, relating to the construction, operation, use and insurance of the facilities, the segregation, expenditure and audit of accounts of the bond proceeds and of the income pledged, the establishment and collection of rents, charges, admissions and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose, and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds.

Issue of refunding bonds.

(7) Issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations heretofore or hereafter issued by the regents, subject to the following provisions:

Exchange of bonds.

(a) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues



HeinOnline -- 1963 vol. II 820 1963

pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

Interest.

(b) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for replacements, repairs, betterment or new facilities, and the lien of such new bonds upon the net income and receipts pledged must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the resolution or indenture authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent (3/8 of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

Deposit in escrow.

(c) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or indenture authorizing the refunding bonds shall ir-



HeinOnline -- 1963 vol. II 821 1963

revocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

Qualified securities.

Use of excess revenues.

(d) Revenues or other funds on hand, in excess of amounts pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (c) hereof, to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

Sale or exchange of bonds— approval by state controller.

(8) Sell bonds and sell or exchange refunding bonds issued hereunder in such manner and upon such terms as to maturities, interest rates and redemption privileges, and for such price, as the regents shall determine with the approval of the state controller.

State not obligated.

Section 4. **State not obligated.** No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

Unit financing— separate income.

Section 5. **Units of financing.** In creating and discharging obligations under this chapter, all of the reve-



HeinOnline -- 1963 vol. II 822 1963

nue-producing facilities at each unit of the university of Montana may be considered as one; but income received at one (1) unit shall not be used to discharge obligations created for facilities at another unit.

Use of state funds restricted.

Section 6. **Restriction on use of state funds.** No state funds except those specified in section 3 shall be obligated or used for the purposes of this chapter, unless specifically directed by the legislative assembly.

Previous contracts unimpaired.

Section 7. **Previous contracts unimpaired.** This chapter shall not impair any contract, indenture or agreement executed under previous laws.

Prior obligations not affected.

Section 8. **Prior obligations not affected.** No provision of this chapter shall affect or impair:

(1) Any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to the effective date of this chapter;

(2) The issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to the effective date of this chapter.

Repealing clause.

Section 9. Sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947 are repealed.

Effective immediately.

Section 10. This act is effective on its passage and approval.

Approved March 9, 1963.

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## CHAPTER 253

An Act to Provide for the Financing of Soil Conservation Districts By the Levy of Assessments; Providing the Procedure Therefor; Providing An Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Recording—notice of creation—soil conservation district.

Section 1. The supervisors of a soil conservation district shall, within ten (10) days after the creation of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district



HeinOnline -- 1963 vol. II 823 1963

organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

Copies to county commissioners and assessor.

Section 2. The county clerk and recorder shall, within thirty (30) days after receipt of such notice, transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized, and a copy to the county assessor.

Duty of assessor to prepare annual list—certified copies.

Section 3. The county assessor shall, on or before August 1 of each year, prepare and certify a list of all persons owning grazing and agricultural land within the county and within the district. Certified copies of the list so prepared shall be transmitted to the supervisors of the district and to the board of county commissioners.

Estimate of assessment.

Section 4. The supervisors of the district shall from the list so prepared furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

Proportioned estimate—more than one county.

Section 5. If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

Statement.

Determination of amount of estimate

Section 6. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district, the costs of the work which the supervisors may deem advisable to be done during the ensuing year, the estimated costs of repairs to and maintenance of the property and works of the district, and the estimated expenses of any action or proceeding to which the district is or may be party, including the cost of employing engineers and attorneys.

Regular assessments.

Section 7. Assessments levied pursuant to this act shall be known as regular assessments.

Annual limit.

Section 8. The regular assessment in any one year shall not exceed one half (½) of one (1) mill on the



HeinOnline -- 1963 vol. II 824 1963

dollar of total taxable valuation of grazing and agricultural land within the district. The valuation shall be determined according to the last assessment roll.

Annual levy of soil conservation district assessment.

Section 9. The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the grazing and agricultural land within the county and within the district to be known as the "..... (name of district) soil conservation district assessment," sufficient to raise the amount reported to them in the estimate of the supervisors; provided, however, that income from the levy of the assessment provided in this act against any single district shall not exceed one thousand dollars ($1000).

Income limit.

Determination of rate.

Section 10. The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the grazing and agricultural land in the district and in the county and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars ($100) it shall be taken as a full cent.

Assessment certified to respective assessors.

Section 11. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this act. The assessment shall be certified to the county assessor of each of the respective counties and entered on the assessment roll.

Applicable laws.

Section 12. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this act, are hereby adopted and made a part hereof. Said officers are liable on their several official bonds for the faithful discharge of their duties under this act.

Liability on official bonds.

"Principal county" defined.

Section 13. "Principal county," as used in this act, means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

Duty of treasurers to pay to principal county.

Section 14. The treasurers of each of the counties, other than the principal county shall, not less than twice



HeinOnline -- 1963 vol. II 825 1963

a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

Depository.

Section 15. The treasury of the principal county is the depository of all of the funds of the district.

Treasurer of principal county—liability on official bond.

Section 16. The treasurer of the principal county shall receive and receipt for all money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

Payment on warrants.

Section 17. The treasurer of the principal county shall pay out of money of the district only upon warrants of the county auditor, or in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district signed by at least two (2) of such supervisors.

Verified report of treasurer.

Section 18. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand, and the receipts and disbursements since his last report. Such report shall be verified.

Expenditure.

Section 19. All moneys collected under this act shall be expended for the purposes provided in section 76-115.

Effective immediately.

Section 20. This act shall be in full force and effect from and after its passage and approval.

Approved March 9, 1963.

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## CHAPTER 254

An Act Amending Sections 80-816 and 80-920, R. C. M. 1947, to Increase Fees Paid By Counties for the State Industrial School and the State Vocational School for Girls; and Depositing Proceeds Under Section 80-816, R. C. M. 1947, in the Sinking Fund.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 80-816, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 826 1963

"80-816. **Expenses.** It shall be stated in the order of commitment the place where the boy resided at the time he was taken into custody, his age, as near as can be ascertained, and that such boy has not been convicted of any crime and is not deprived of any of his civil rights or privileges by reason of the making of such order of commitment; and shall command such officer, or an employee of the industrial school designated for such purpose as provided in section 80-807, to take such boy and deliver him without delay to the president of said school, or other person in charge thereof, at the place where the same is located, and the showing of such certificate of the purposes of this act shall be conclusive evidence of his residence or age; accompanying this warrant the judge shall transmit by the officer or employee of the school executing it, a statement of the nature of the complaint to the president, together with such other particulars concerning the boy as the judge is able to ascertain; provided that the expense of committing the boy to said school and the returning of him to his parent or guardian after his release therefrom, shall be at the expense of the county of which such boy is committed; and provided that the county from which any boy committed to such school shall be sent be liable for the expense attending the care, education, training, and safekeeping of such boy, and shall pay for the same the sum of *seventy-five (75¢) cents* per day for each boy so sent, while he will be in actual physical attendance in said institution. On the first day of every month the president of such school shall prepare and transmit to the respective boards of county commissioners of the several counties liable for such care, education and safekeeping, an itemized account showing the name of each boy, the number of days in the immediately preceding month for which such payment is to be made and the amount thereof, and said board of county commissioners, after checking the same for its correctness, shall allow it and pay the same by warrant drawn against its general or poor fund, payable to said industrial school and all such warrants when received shall be by the president of school transmitted to the state treasurer and the proceeds thereof shall be deposited to the credit of the *sinking fund. Such income received in such fund may be pledged to the retirement of any bonds or other*

Order of commitment—boys.

Statement of complaint.

Expenses paid by county of commitment.

President of industrial school shall mail monthly accounts.

Payment by warrant.

Deposit of proceeds—use.



HeinOnline -- 1963 vol. II 827 1963

*securities issued for the construction of a physical education building at the school;* and provided further, that the provisions of this section requiring payment to be made by counties for care, education, training, and safekeeping shall apply to all boys committed to and in such school on the date this act takes effect."

Amending clause.

Section 2. Section 80-920, R. C. M. 1947, is amended to read as follows:

Warrant of commitment—girls.

"80-920. **Warrant of judge—expense of commitment and care—Indian girls.** The judge shall certify in the warrant the place where the girl resided at the time of her arrest; also her age as nearly as can be ascertained, and command a woman officer to take such girl and deliver her without delay to the principal of said school, or other person in charge thereof, at the place where the same is located, and the showing of such certificate for the purposes of this act shall be conclusive evidence of her residence or age; accompanying this warrant the judge shall transmit by the officer executing it a statement of the nature of the complaint to the principal, together with such other particulars concerning the girl as the judge is able to ascertain; provided, that the expense of committing such girl to the state vocational school for girls, of the returning of her to her parent or guardian after her release therefrom, shall be at the expense of the county from which the girl is committed; and provided, further, that the county from which any girl committed to the state vocational school for girls shall be sent shall be liable for the expense attending the care, education, training, and safekeeping of such girl while she is in actual physical attendance or residence in said school, and shall pay for the same the sum of *seventy-five cents (75¢)* per day for each girl so sent until final discharge; and provided, further, that Indian girls who are wards of the United States may be committed by a court of competent jurisdiction and shall be eligible to, and shall be admitted to such school upon the payment or assurance of payment by the Indian department for each Indian ward admitted the sum of *seventy-five cents (75¢)* per day until final discharge, and the principal shall bill the proper agency therefor. On the first of every month the principal of said vocational school for girls shall prepare and transmit to the respec-

Statement of complaint.

Expense paid by county of commitment.

Indian girls—payment by Indian department.

Principal of vocational school for girls shall mail monthly accounts.



HeinOnline -- 1963 vol. II 828 1963

tive boards of county commissioners of the several counties liable for such care, education and safekeeping a certificate showing in detail the persons on whose account such expense was incurred, the amount due on account of each such person respectively for the month preceding, and the said board of commissioners shall allow the said sum so certified against the respective counties, and shall pay the same by warrant to the state vocational school for girls, the same as any other current expense of said county."

Payment by warrants.

Approved March 9, 1963.

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## CHAPTER 255

An Act Providing for the Construction of a Physical Education Building at the State Industrial School, Allowing the Borrowing of Money or Issuance of Bonds or Other Securities for Such Purpose and Providing for Repayment of the Same.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The state board of public institutions may authorize the construction of a physical education building at the state industrial school; provided, however, that the cost of such building shall not exceed two hundred and fifty thousand dollars ($250,000).

Construction of physical education building—state industrial school.

Section 2. For the purpose of effecting the construction of the physical education building specified in section 1, the state board of public institutions, may:

Authority to finance.

(1) Borrow money and issue bonds or other securities.

(2) For the repayment of money so borrowed, or the retirement of bonds or other securities so issued, pledge all or a part of the income received from the daily fees received from counties and deposited in the sinking fund.

(3) Upon the retirement of these bonds or other securities, this money shall revert to the general fund.

Section 3. A copy of the notice of sale of any bonds authorized by this act shall be forwarded to the register

Notice of sale of bonds.



HeinOnline -- 1963 vol. II 829 1963

of state lands of the state of Montana at least thirty (30) days before the date of such sale.

State not obligated.

Section 4. No obligation created by this act shall ever become a charge against the state of Montana.

Approved March 9, 1963.

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## CHAPTER 256

An Act Amending Section 79-1202, R. C. M. 1947, to Allow the State Board of Land Commissioners to Invest In Bonds or Other Securities Issued for Construction of a Physical Education Building at the State Industrial School.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 79-1202, R. C. M. 1947, as amended, is amended to read as follows:

Authority to invest certain funds as part of Montana trust and legacy fund.

"79-1202. **Funds to be invested according to unified plan.** (1) The state board of land commissioners is hereby authorized and required to invest as part of the Montana trust and legacy fund the following: The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions of learning, subject to investment; the escheated estates funds, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfuly constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long term investment not legally in the custody of any lawfully con-



HeinOnline -- 1963 vol. II 830 1963

stituted board or the investment of which has not been designated by statute. Moneys in the Montana trust and legacy fund shall be invested subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008, inclusive.

Authority to invest certain funds in long term investment fund.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: That part of the Montana highway patrolmen's retirement fund in excess of twenty-five thousand dollars ($25,000); the public employees' retirement fund; the industrial accident reserve fund; all funds subject to investment as designated by the teachers' retirement board; that part of the fish and game fund designated as available by the Montana fish and game commission and all other funds designated by statute. Moneys in the long term investment fund may be invested as follows:

Approved investments.

Federal obligations.

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

Other obligations.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings; *in bonds or other securities which may be issued for the construction of a physical education building at the state industrial school, provided that sufficient income from fees collected under section 80-816 shall be pledged for the retirement of such bonds or other securities;* in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; the purchase of all such investments to be subject to the discretion of the board.



HeinOnline -- 1963 vol. II 831 1963

Federal housing debentures.

(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations.

First mortgages.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United States government or an agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages. All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

Authority to invest certain moneys in short term investment fund.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in any state bond sinking and interest fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any educational bond interest and sinking fund; any of the Montana highway patrolmen's retirement fund less than twenty-five thousand dollars ($25,000) as directed by the Montana highway patrolmen's retirement board and any other fund designated by statute to be so invested or any fund in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which fund is requested by the officer, or officers or governing body and which fund is subject to investment. The funds in the short term investment fund may be invested as follows:

Approved investments.

State warrants—federal treasury obligations.

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury



HeinOnline -- 1963 vol. II 832 1963

obligations shall be credited to the general fund of the state of Montana.

State bonds, federal bonds, etc.

(b) Any sinking and interest fund and any other funds may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in any sinking and interest fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for the payment of principal and interest of the obligations for which the sinking and interest fund was created.

Limitation.

All securities purchased and all cash on hand for each fund shall be kept separate in the short term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

Board authorized to employ financial expert.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there shall not be paid for such services an amount in excess of one thousand dollars ($1,000) in any one (1) fiscal year.''

Approved March 9, 1963.

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## CHAPTER 257

An Act Authorizing the State Board of Examiners to Borrow Up to One Million Dollars ($1,000,000) for the Reconstruction, Improvement, Remodeling, Repair, and Furnishing of the State Capitol Building of the State of Montana at Helena, Montana; Providing for the Issuance of Bonds, Indentures and/or Notes; Dedicating Income from Capitol Building Land Grant for Repayment of Loans; Enumerating the Power and Duties of the State Board of Examiners in Carrying Out the



HeinOnline -- 1963 vol. II 833 1963

Provisions of This Act; and Providing for an Effective Date and a Severability Clause.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Authority to finance repair of state capitol.

Section 1. In order to provide for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana, the state board of examiners of the state of Montana is authorized to borrow sums of money from time to time from the unpledged investment funds available to any state agency or division of government, and to issue bonds, indentures or notes therefor.

Authority to employ architects, engineers—repair without delay.

Section 2. The state board of examiners is hereby authorized, directed and empowered to employ an architect or architects, an engineer or engineers for such period of time as it may deem proper for the purpose of making the necessary studies and preparing complete plans and specifications; and to proceed with the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building without delay.

Bids.

Section 3. The state board of examiners shall call for bids for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in such amounts as the board may determine, conditioned for the faithful performance of their duties and contracts.

Bid bonds.

Limit on borrowed amount.

Section 4. The aggregate amount which the state board of examiners is authorized to borrow under this act for the purposes herein expressed shall not be in excess of the sum of one million dollars ($1,000,000).

Bonds, indentures, notes, shall bear interest—requirements.

Section 5. The bonds, indentures and/or notes issued by the state board of examiners under authority of this act shall not bear interest at a rate in excess of four per cent (4%) per annum payable semiannually. They shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding fifteen (15), as said board may specify. All bonds, indentures and/or notes shall be optional and redeemable at any time after the date of issue, at the



HeinOnline -- 1963 vol. II 834 1963

option of the state board of examiners. Said bonds, indentures and/or notes shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. Coupons attached to any such bonds may bear the facsimile signature of the members of said board.

Sale of bonds, etc.

Section 6. Said bonds, indentures and/or notes shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds, indentures and/or notes shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds, indentures and/or notes.

Repayment of principal and interest.

Section 7. The principal and interest of the bonds, indentures and/or notes authorized by this act shall be payable out of the following fund and from it only: As much as may be necessary from the income received from the capitol building land grant shall be, and the same is hereby dedicated and appropriated for the repayment of the principal and interest of the bonds, indentures and/or notes provided for by this act.

Deposit in sinking fund.

Section 8. To provide for the payment of the interest and principal of the bonds, indentures and/or notes authorized by this act, all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, indentures and/or notes and the reconstruction, improvement, remodeling, repair and furnishing of said capitol building shall be paid and deposited in the sinking fund in the state treasury.

Validation.

Section 9. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

Consultation.

Section 10. The State Board of Examiners shall consult with the members of the Legislative Council as to plans for remodeling the legislative areas of the building.



HeinOnline -- 1963 vol. II 835 1963

Severability.

Section 11. Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof.

Effective immediately.

Section 12. This act shall be in full force and effect from and after its passage and approval.

Approved March 11, 1963.

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## CHAPTER 258

An Act to Establish the Policy of the State of Montana on Protection of Fishing Streams; Providing for Submission of Plans for Construction and Hydraulic Projects Affecting Such Streams to the Montana Fish and Game Commission and for Review of Such Plans; and Providing for Arbitration of Disagreements Between the Fish and Game Commission and the Agency Proposing Such Projects.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Policy to protect fishing waters.

Section 1. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

Notice of proposed construction on streams must be served on state fish and game commission.

Section 2. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called "applicant", shall not construct, modify, operate, maintain, or fail to maintain, any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the Montana Fish and Game Commission, on forms furnished by the Fish and Game Commission as soon as preliminary plans are completed, but not less than sixty (60) days prior to com-



HeinOnline -- 1963 vol. II 836 1963

mencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect in any manner specified above any such stream.

Commission may aid in preparing plans and specifications.

Section 3. The commission shall promptly examine and investigate all such plans. Should the commission determine the plans and specifications furnished with any such application technically insufficient the commission shall so notify the applicant, and may render aid in preparing adequate plans and specifications.

Notice of adverse effect—recommendations.

Section 4. Within thirty (30) days after the receipt of such plans, the commission shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the fish and game commission notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

Notice of refusal—arbitration.

Section 5. (1) If the fish and game commission notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within fifteen (15) days after receiving the recommendations and alternatives of the fish and game commission, shall notify the fish and game commission if it refuses to modify its plans in accordance with such recommendations or alternatives. In the event of such refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

Board of arbitration—selection—decision.

(2) Upon receipt of such notice of refusal, the fish and game commission shall immediately determine if it wants the disagreement subjected to arbitration. Within ten (10) days after such determination, and after notice to the agency involved, the fish and game commission shall then designate one person as an arbitrator and the agency involved shall designate another person as an arbitrator. Within five (5) days after appointment of such arbitrators, said arbitrators shall agree upon a third person who shall have no connection with either the agency involved or the Montana Fish and Game Department ,and these three (3) persons shall be considered the board of arbitration. Within ten (10) days after such



HeinOnline -- 1963 vol. II 837 1963

board is designated, the arbitration board shall meet, hear testimony and issue a decision signed by at least two members of the Arbitration Board. Such decision shall be binding on all parties concerned. The expense of the third arbitrator shall be divided equally between the agency involved and the Montana fish and game department. All other expenses of arbitration shall be borne by the fish and game department.

Construction of act.

Section 6. This act shall not operate or be so construed as to impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States, or in emergencies such as floods, ice jams or other conditions causing emergency handling.

Exceptions—irrigation projects.

Section 7. This act shall not apply to any state water conservation board irrigation project presently operating, or that may be constructed in the future or to any irrigation district project or any other irrigation project.

Effective to June 30, 1965.

Section 8. This act shall be in full force and effect until June 30, 1965.

Approved March 11, 1963.

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## CHAPTER NO. 259

An Act Continuing the Montana Territorial Centennial Commission as a Temporary Agency of State Government; Prescribing the Powers of the Commission and Appropriating Moneys for the Operation of the Commission.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Montana territorial centennial commission continued as temporary state agency.

Section 1. The Montana territorial centennial commission, hereafter referred to as "commission', organized under the provisions of senate resolution 18 and house resolution 9 passed by the thirty-seventh legislative assembly, is hereby continued as a temporary agency of state government. The number of commission members may be increased or decreased by the governor.

Purpose.

Section 2. The purpose of the commission is to make plans for the proper observance and celebration of the centennial and to carry out such plans.



HeinOnline -- 1963 vol. II 838 1963

Section 3. The commission may

Powers.

(1) Receive contributions, royalties, admission fees and other moneys arising from its activities. All moneys received by the commission shall be deposited in the state treasury for the use of the commission.

(2) Appoint personnel to administer its programs and pay such personnel out of moneys collected by, or appropriated to the commission.

(3) Enter into contracts. No contract or obligation entered into by the commission shall ever become a charge against the state of Montana.

(4) Perform whatever other functions are necessary to carry out the purpose of the commission.

Section 4. Two hundred thousand dollars ($200,000) is appropriated out of the general fund for the operation of the commission for the biennium beginning July 1, 1963. In addition, all moneys collected by the commission are appropriated for the operation of the commission for the biennium beginning July 1, 1963.

Appropriation.

Section 5. This act is effective from July 1, 1963, to June 30, 1965. On June 30, 1965, the existence of the commission shall cease, and all moneys of the commission shall be transferred to the state general fund.

Termination—transfer to general fund.

Approved March 11, 1963.

## CHAPTER 260

An Act Revising Chapter 4, Title 81, R. C. M. 1947, to Change Certain Requirements and Provisions for the Leasing of State Lands by Amending Sections 81-401, 81-402, 81-405, 81-406, 81-407, and 81-433, R. C. M. 1947, Relating to the Policy as to Appraisal and Leasing of State Land, the Leasing of State Lands and the Basis Thereof, the Renewal of Leases and Preference Rights of Lessees, the Fixing of the Value of Improvements Placed on Leased Land by Lessees, the Qualifications of Lessees and the Terms of Leases, and the Formula for Determining Rentals on State Grazing Lands; and by Repealing Section 81-417, R. C. M. 1947, and Section



HeinOnline -- 1963 vol. II 839 1963

2 of Chapter 284, Laws of the Thirty-sixth Legislative Assembly of Montana, 1959, Compiled as Section 81-433.1, R. C. M. 1947; Repealing All Acts and Parts of Acts in Conflict Herewith; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 81-401, R. C. M. 1947, is amended to read as follows:

Policy of state—appraisal of leased state lands.

"81-401. **Policy of state as to appraisal and leasing state land.** It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised *from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands."*

Purpose.

Amending clause.

Section 2. Section 81-402, R. C. M. 1947, is amended to read as follows:

"81-402. **Lease of state lands—crop share rental basis used.**

Lease upon application.

(1) Under the general direction and control of the state board of land commissioners, the commissioner shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application, provided that, as to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth (¼) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

Crop share rental basis.

Rental basis—unusual cases.

(2) In unusual cases the board may authorize a lease upon other basis than crop share, but in all such unusual cases the board shall set forth in its minutes of approval the unusual conditions of the case and the rental to be charged, and by unusual conditions is meant a proposed use of the land for other than the annual production of agricultural crops justifying, in the opinion of the board, a greater money rental of the land than the value of the

Approval.



HeinOnline -- 1963 vol. II 840 1963

usual landlord share of annual agricultural crops in the area in which the land is situated, and provided further that, the rental rate for all state grazing lands leased and to be leased shall be based upon the appraised animal-unit-month carrying capacity of the land *as provided in section 81-433, R. C. M. 1947, as amended,* and provided further that, as to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time under the direction of the commissioner and with the approval of the state board of land commissioners and record made thereof, and such town or city property may be leased at its current appraised rental value for terms of not to exceed five (5) years.

State grazing lands.

Town and city lots.

(3) All leases of agricultural or grazing lands, or town or city lots shall be upon condition that the state board of land commissioners may in its discretion, offer said land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease."

Lease conditoin—board may sell.

Section 3. Section 81-405, R. C. M. 1947, is amended to read as follows:

Amending clause.

"81-405. **Renewal leases — preference right of lessee.** A lessee of state land classed as agricultural, grazing, town lot or city lot, or in any of those classes, who has paid all rentals due from him to the state and who has not violated the terms of his lease shall be entitled to have his lease renewed *for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions, at the time of the renewal as may by law be imposed as terms of such leases, at any time within thirty (30) days prior to its expiration if no other application or applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. In case such other application or applications have been received, the holder of the lease shall have the preference right to lease the land covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant.* Applications for lease of lands in this section referred to shall be given preference in the order of their receipt at the office of the commissioner in Helena.

Preference right of lessee to renewal.

Term of renewal—30 days prior to expiration.



HeinOnline -- 1963 vol. II 841 1963

Board has power to withdraw lands.

Submission of bids.

*Notwithstanding the foregoing provisions,* the state board of land commissioners shall have the power to withdraw any agricultural or grazing state land from further leasing for such period as the board may determine to be in the best interest of the *state of Montana.* All bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the state board of land commissioners at the office of the commissioner."

Amending clause.

Section 4. Section 81-406, R. C. M. 1947, is amended to read as follows:

Arbitrators shall fix value of improvements.

"81-406. **Arbitrators to fix value of improvements—appeal.** If the owner of any improvements on state lands *of the type authorized by law at the time they were placed thereon* desires to sell such improvements to the new lessee and they are unable to agree on the value thereof,

Selection.

such value shall be ascertained and fixed by three (3) arbitrators, one of which shall be appointed by the owner of the improvements, one by the new lessee and the third

Compensation.

by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding on both parties; provided, however, that if either party is dissatisfied

Appeal.

with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision

Cost of re-examination.

shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this act provided."

Amending clause.

Section 5. Section 81-407, R. C. M. 1947, is amended to read as follows:

Qualifications of lessee.

"81-407. **Who may lease—how much and for what length of time.** No person shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of twenty-one (21) years. Any such person and any association, company or corporation



HeinOnline -- 1963 vol. II 842 1963

authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section. Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands shall be for a *period other than five (5) or* ten (10) years. *Leases for city and town lots shall not exceed five (5) years. When a lease expires or is cancelled the commissioner shall immediately so notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or cancelled lease.* If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide."

Limits on term of lease.

Increased rental.

Section 6. Section 81-433, R. C. M. 1947, is amended to read as follows:

Amending clause.

"81-433. *When used in this section:*

*'Animal unit' means one cow, one horse, five sheep or five goats.*

"Animal unit" defined.

*'Animal - unit - month carrying capacity' means that amount of natural feed necessary for the complete subsistence of one animal unit for a period of one (1) month.*

"Animal-unit-month carrying capacity defined.

The state board of land commissioners shall establish the per annum rental rate per section of all grazing lands which are the property of the state of Montana upon the animal-unit-month basis as hereinafter provided.

Board shall establish rate.

In fixing the minimum annual rental per section, the following formula shall be used:

Formula.

*The base rental shall be computed by multiplying thirty-two cents (32¢) plus two (2) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.*

*(a) The minimum annual rental for grazing lands with an annual carrying capacity of more than fourteen (14) and less than twenty (20) animal units per section is the base rental.*



HeinOnline -- 1963 vol. II 843 1963

*(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than nineteen (19) animal units per section is ten cents (10¢) more than the base rental.*

*(c) The minimum annual rental for grazing lands with an annual carrying capacity of less than fifteen (15) animal units per section is ten cents (10¢) less than the base rental.*

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the commissioner of state lands and investments made pursuant to section 81-404, R. C. M. 1947.

Statistics.

The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the bureau of agricultural economics of the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time."

Effective 1964 rental year.

Section 9. This act shall be effective for the 1964 rental year and thereafter.

Approved March 13, 1963.

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## CHAPTER NO. 261

An Act to Amend Sections 75-4120, 75-4121, 75-4122, 75-4123, 75-4124, 75-4125, 75-4126, 75-4127, 75-4128, 75-4130, 75-4133, 75-4134 and 75-4138 of the Revised Codes of Montana of 1947; Providing Means Whereby County High Schools May Be Unified and Made a Part of the School System of the District in Which They Are Located; Repealing All Acts and Parts of Acts in Conflict Herewith and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 75-4120, R.C.M., 1947, is amended to read as follows:

"75-4120. (1262.19) **Authority to abolish** *or to unify.*



HeinOnline -- 1963 vol. II 844 1963

Any county in which a county high school has been established may abolish such county high school *or unify it with and make it a part of the public school system of the school district in which it is located* and dispose of all property belonging thereto in the manner provided in this chapter."

County may abolish or unify high school.

Section 2. Section 75-4121, R.C.M., 1947, is amended to read as follows:

Amending clause.

"75-4121. (1262.20) **Petition to be filed.** Between the first day of July and the first day of September in any year in which a general election is held in the state of Montana twenty per centum (20%) or more, of the qualified *registered* electors of any county maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school be abolished *or praying that the county high school be unified with and made a part of the public school system of the school district in which said county high school is located.*"

Petition—20% or more of qualified registered voters.

Section 3. Section 75-4122, R.C.M., 1947, is amended to read as follows:

Amending clause.

"75-4122. (1262.21) **Commissioners to submit question.** At the first regular monthly meeting of the board of county commissioners of the county immediately following such filing the petition shall be called to the attention of the board by the county clerk; and the board shall immediately direct the submission *of the question appearing in the petition* to the registered voters of the county at the ensuing general election for that year."

Submission to voters at next general election.

Section 4. Section 75-4123, R.C.M., 1947, is amended to read as follows:

Amending clause.

"75-4123. (1262.22) **Publication of notice** *and preparation of poll books.* The county clerk of the county shall publish a notice of the filing and purpose of the said petition, *which notice shall contain the question of either abolishing the county high school or of unifying the county high school with and making it a part of the public school system of the school district in which it is located. The notice shall also state that the said question will be sub-*

Notice.



HeinOnline -- 1963 vol. II 845 1963

Publication.

*mitted at the ensuing general election. The notice shall be published* at least once a week for four successive weeks in some newspaper of general circulation published in the county, and, if there be none, in such newspaper as the board of county commissioners may designate, the first publication of such notice to be made between September 1 and September 15 of the said year. *The county clerk of said county shall prepare suitable poll books containing the names of all registered electors at the expense of the county.''*

Poll books.

Amending clause.

Section 5. Section 75-4124, R.C.M., 1947, is amended to read as follows:

Further notice—return of election.

''75-4124. (1262.23) **Further notice required—manner of holding election—ballots.** Further notice of the submission of the question shall be given, and such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election, subject, however, to the following special requirements:

Ballot forms.

*If the question is to abolish the county high school, the votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form under A. But if the question is to unify the county high school and make it a part of the public school system of the school district in which the county high school is located, then a ballot similar to form B shall be used.*

*A. Abolishment of county high school.*

☐ For the abolishment of the county high school.

☐ Against the abolishment of the county high school.

*B. Unification of county high school.*

☐ *For the unification of the county high school.*

☐ *Against the unification of the county high school.*

Manner of voting.

An elector may vote for *the question submitted to him for consideration* by placing an ''X'' in the square immediately before the words ''For the abolishment *(or unification)* of the county high school''; and a ballot so marked and cast shall be counted in favor of abolishing *(or unifying)* the county high school. An elector may vote against



HeinOnline -- 1963 vol. II 846 1963

the *question submitted to him for consideration* by placing an "X" in the square immediately preceding the words "Against the abolishment *(or unification)* of the county high school"; and a ballot so marked and cast shall be counted against abolishing *(or unifying)* the county high school."

Section 6. Section 75-4125, R.C.M., 1947, is amended to read as follows: Amending clause.

"75-4125. (1262.24) **Action by board of county commissioners when election favors abolishing** *or unifying county* **high school.** If a majority of all votes cast at such general election upon the question of the abolishment *or the unification* of the county high school *with and making it a part of the public school system of the school district in which the county high school is located* shall be in favor of abolishing *or unifying* the same the board of county commissioners of the county at its first regular meeting in December following *the election* shall make and enter at large upon its minutes an abstract of the votes so cast and a resolution that in accordance therewith on and after July 1st of the year immediately following the county high school of the county shall be, and is thereby abolished, *or, in case of unification, that the county high school shall be and is thereby unified with and made a part of the public school system of the school district in which the county high school is located, and that the board of trustees of said county high school shall be and is thereby dissolved, and that its powers and duties shall be and are thereby assigned to the board of trustees of the school district with which the county high school was unified, provided, that the board of trustees of said school district shall have, and is hereby given the power and authority to prepare and adopt the preliminary high school budget for the ensuing fiscal year beginning on said July 1st."*

When majority favor abolishment or unification—county commissioners shall abstract votes.

Resolution.

Section 7. Section 75-4126, R.C.M., 1947, is amended to read as follows: Amending clause.

"75-4126. (1262.25) **When election favors retaining high school.** But if a majority of all votes cast at such election shall be against the abolishment, *or the unification,* of the county high school a similar abstract of the votes shall in like manner be entered by the board of

When majority is against abolishment or unification—abstract of votes.



HeinOnline -- 1963 vol. II 847 1963

No further submission for two years.

county commissioners at large upon their minutes at its December meeting aforesaid; and no further submission of the question of abolishing *or unifying* the county high school shall be had in that county for at least *two (2) years* thereafter, provided that if an election against the abolishment of the county high school has been had within any county within two years prior to the enactment of this statute, that the question shall not again be resubmitted for at least *two (2) years* after the date that this act becomes effective."

Amending clause.

Section 8. Section 75-4127, R.C.M., 1947, is amended to read as follows:

"75-4127. (1262.26) **Disposition of unexpended funds of county high school after abolishment** *or unification.*

Abolishment—disposition of funds.

When any county high school is abolished pursuant to law all unexpended moneys belonging to such high school shall be applied and paid as follows:

1. To the payment of outstanding warrants issued by the board of trustees of the county high school.

2. To the payment of the interest and principal of outstanding bonds issued for county high school purposes.

3. To the credit of the funds of the school districts of the county which maintain and conduct accredited high school classes, the apportionment among such districts to be made according to the average daily attendance as determined by the county superintendent of schools at such accredited high school classes for the school year immediately next preceding the effective date of the abolishment of the county high school. But if the school district in which the county high school was located shall establish an approved high school, or approved high school classes, for the school year immediately following upon the effective date of the abolishment of the county high school such school district shall share in the distribution of any unexpended balance of the funds of the county high school upon the basis of the average daily attendance at the county high school in approved high school classes during the last school year of its existence. *When any county high school is unified pursuant to the provisions of this chapter, all unexpended moneys belonging to such high school, other than funds that were raised for the purpose of paying the interest and principal of outstanding bonds*

Unification—disposition of funds.



HeinOnline -- 1963 vol. II 848 1963

*issued for county high school purposes, shall be paid in the following manner:*

*1. To the payment of the outstanding warrants and current invoices for material and services purchased by the board of trustees of the county high school.*

*2. Any remainder shall be deposited to the credit of the school district in which the county high school was located to be used in the budget for the operation of the district high school."*

Section 9. Section 75-4128, R.C.M., 1947, is amended to read as follows: Amending clause.

"75-4128. (1262.27) **Disposition of property of county high school when abolished** *or unified*—**inventory—appraisal—compensation of appraisers.** When any county high school is abolished all its real and personal property, other than its moneys, shall be disposed of in the following manner: The district court of the county in which such high school was located on application of the board of county commissioners shall appoint three competent persons, residents of the county, to inventory and appraise all such real and personal property of the said county high school. In making such appraisement the appraisers shall take into account ordinary depreciation, and the adaptability or lack of adaptability of the buildings, grounds, and other real estate, and of the various articles of personal property to any special use for which such property may be sold. The appraisers shall be allowed their necessary expenses, including mileage at the rate of ten (10) cents per mile from their respective residences to the place where the property of the county high school is found, and return, expenses and mileage to be paid out of any moneys belonging to the county high school, or, if none, out of the general fund of the county, upon the order of the district court. *When any county high school is unified with and made a part of the public school system of the school district in which it is located according to this chapter, all its real and personal property, including all appurtenances and hereditaments, except as otherwise provided for in this chapter, shall become and remain the property of the school district with which it was unified without an inventory and appraisement."*

Abolishment—disposition of property.

Appraisers appointed.

Unification—disposition of property.

Section 10. Section 75-4130, R.C.M., 1947, is amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. II 849 1963

Sale of property—notice.

"75-4130. (1262.29) **Board of county commissioners to sell—manner of sale—execution of deeds.** Upon the adoption or approval of the appraisement the board of county commissioners of the county shall proceed to sell all of such property after notice and in the manner provided by law for the sale by the board of other county property; and upon any such sale of all or any portion of such property pursuant to law and the payment to the county treasurer of the purchase price the said board shall be fully authorized and empowered to make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the purchaser or purchasers; *provided, that if the county high school was unified with and made a part of the public school system of the school district in which it was located pursuant to the provisions of this chapter, the board of county commissioners of the county shall make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the school district with which the county high school was unified.*"

Power to execute conveyance.

Amending clause.

Section 11. Section 75-4133, R.C.M., 1947, is amended to read as follows:

Disposition of tax proceeds after abolishment or unification.

"75-4133. (1262.32) **Disposition of taxes levied for county high school but unpaid before abolishment** *or unification.* All taxes levied for the support of any county high school which is thereafter abolished before such taxes are collected shall, when collected, be paid over into the fund created by the special high school tax levied in the county, and apportioned and disbursed as a part of such fund, and, if there be no such fund, then into the general school fund of the county, *provided, however, that if any county high school is unified, all taxes levied for the county high school shall be paid to the school district for the support of the district high school established by the unification.*"

Amending clause.

Section 12. Section 75-4134, R.C.M., 1947, is amended to read as follows:

Deficiency levy after abolishment.

"75-4134. (1262.33) **Liquidation of** *bonded* **indebtedness of county high school upon abolishment** *or unification.* If the funds of any county high school which has been abolished, and the proceeds of the sale of all its property according to law, are not sufficient to pay all



HeinOnline -- 1963 vol. II 850 1963

the outstanding warrants, bonds and other legal obligations of the said high school, it shall be the duty of the county commissioners and of the board of trustees of the said high school annually to ascertain the amount of such warrants, bonds and other outstanding indebtedness and to make such annual tax levies according to law as may be necessary to pay and retire such warrants, bonds and/or other outstanding obligations, all in the same manner and by the same means as though the said county high school had not been abolished; and for such purpose and until such indebtedness be fully paid and discharged the board of trustees of the said county high school shall be continued in existence and shall function, and together with the board of commissioners of the county shall exercise and have the same powers for retiring and paying such indebtedness as though the said county high school were still functioning and in existence. *When a county high school is unified with and made a part of the public school system of the school district in which it is located, all outstanding bonds shall remain the liability of the county or that portion of the county against which the bonds were originally issued. It shall be the duty of the county commissioners and the board of trustees of the school district with which the county high school was unified to ascertain annually the amount of such bonds and to make such annual tax levies according to law as may be necessary to pay and retire such bonds in full, all in the same manner and by the same means as though the said county high school had not been unified.*"

Levy to pay bonded indebtedness after unification.

Section 13. Section 75-4138, R.C.M., 1947, is amended to read as follows:

Amending clause.

"75-4138. (1262.37) **School districts may establish high schools.** Whenever the interests of any school district require it, the board of trustees of the district, with the approval of the superintendent of public instruction, may establish a high school and make the necessary provisions for its quarters, equipment, and teaching force in the manner provided for in section 75-4139, provided, *if any school district acquires the real and all other property of a former county high school by means of unification pursuant to this chapter, the board of trustees of such school district shall have the authority by resolution to establish a district high school using therefor the real*

Power to establish high school.



HeinOnline -- 1963 vol. II 851 1963

*and other property of the former county high school without further action or any approval and the high school established shall be the high school of the high school district in which located, if the county has been divided into high school districts.''*

Repealing clause.

Section 14. That all acts and parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 15. This act shall be in full force and effect from and after its passage and approval.

Approved March 13, 1963.

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## CHAPTER 262

An Act to Authorize, in Certain Instances, the Boards of County Commissioners to Levy an Additional Tax of Not to Exceed Eleven and One-Half (11.5) Mills for the County Poor Funds, Providing for an Effective Date and Repealing All Acts and Parts of Acts in Conflict Herewith.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Additional levy for county poor fund—limitation.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy, not to exceed *eleven and one-half (11.5)* mills, or so much thereof as may be necessary, to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Submission of annual county poor fund budget.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is

State examiner shall certify.



HeinOnline -- 1963 vol. II 852 1963

found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Certificate of state department of public welfare.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificates to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

State board of equalization shall certify amount of levy.

Section 4. This act shall be in full force and effect from the first day of July, 1963 to the thirtieth day of June, 1965.

Effective dates

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Repealing clause.

Approved March 13, 1963.

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## CHAPTER 263

An Act Providing for the Making of Loans and Investments by Building and Loan Associations and Savings and Loan Associations Organized and Operating Under the Laws of the State of Montana, and Providing That Such Associations May Make All Real Estate Loans



HeinOnline -- 1963 vol. II 853 1963

Which May Be Made by Federal Savings and Loan Associations Having Domicile in the State of Montana.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Authority granted building and loan associations to make additional real estate loans.

Section 1. **Loans and Investments.** Building and loan associations and savings and loan associations organized, and operating under the laws of the state of Montana, and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the state superintendent of banks but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

Terms and conditions.

Approved March 13, 1963.

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## CHAPTER 264

An Act to Be Known as the Uniform Commercial Code, Revising the law relating to Certain Commercial Transactions in or Regarding Personal Property and Contracts and Other Documents Concerning Them, Including Sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading, Other Documents of Title, Investment Securities, and Secured Transactions, Including Certain Sales of Accounts, Chattel Paper, and Contract Rights; Providing for Public Notice to Third Parties in Certain Circumstances; Providing for Filing Fees in Certain Circumstances; Regulating Remedies, Procedure, Evidence and Damages in Certain Court Actions Involving Such Transactions, Contracts or Documents; to Make Uniform the Law With Respect Thereto; Amending Sections 3-226, 5-803, 5-1001, 5-1114,



HeinOnline -- 1963 vol. II 854 1963

8-709, 11-2404, 11-3714, 11-3721, 11-3910(b), 13-606, 16-2905, 16-2922, 16-2923, 19-103, 25-231, 32-1905 (2), 45-109, 45-112, 45-116, 45-301, 45-308, 45-704, 45-707, 45-809, 45-911, 45-1106, 45-1107, 45-1410, 47-124, 52-114, 52-116, 52-212, 52-312, 52-313, 52-314, 52-319 Through 52-323, 53-110, 66-202, 67-1301, 72-211, 72-224, 74-608, 79-1905, 88-152, 88-154, 89-109(2), 93-2802, 93-3403, 93-4301, 93-4302, 93-4307(4), 93-4338, 93-4344, 93-4346, 93-5811, 93-6001, 93-6004, 93-8613, 93-401-22, and 93-1401-7 of the Revised Codes of Montana, 1947; Repealing Sections 5-1007, 5-1008, 5-1016, 5-1017, 5-1043, 5-1047 Through 5-1049, 8-501 Through 8-507, 8-816 Through 8-818, 14-523, 15-603, 15-605, 15-628 Through 15-651, 16-2921, 17-308 Through 17-314, 17-601, 17-602, 18-201 Through 18-205, 30-601 Through 30-609, 45-106, 45-1104, 45-1301 Through 45-1305, 52-301 Through 52-311, 52-315 Through 52-317, 55-101 Through 55-1801, 56-107, 65-104, 65-107, 65-115 Through 65-126, 65-201 Through 65-219, 67-1702 Through 67-1704, 72-303, 72-305 Through 72-307, 74-201, 74-202, 74-204 Through 74-207, 74-321, 74-401 Through 74-403, 74-502, 86-705, 86-706, 88-101 Through 88-149, 88-156 Through 88-160, and 93-4339 of the Revised Codes of Montana, 1947, and All Other Legislation Inconsistent Herewith; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

## ARTICLE 1

## GENERAL PROVISIONS

### Part 1

### Short Title, Construction, Application and Subject Matter of the Act

Section 1-101. **Short Title.** This Act shall be known and may be cited as Uniform Commercial Code.

Title—Uniform Commercial Code.

Section 1-102. **Purposes; Rules of Construction; Variation by Agreement.**

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

Liberal construction.

(2) Underlying purposes and policies of this Act are:



HeinOnline -- 1963 vol. II 855 1963

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

Variation by agreement.

(3) The effect of provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

Import of words.

(4) The presence in certain provisions of this Act of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Act unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

Application of general law.

Section 1-103. **Supplementary General Principles of Law Applicable.** Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Construction against implicit repeal.

Section 1-104. **Construction Against Implicit Repeal.** This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.



HeinOnline -- 1963 vol. II 856 1963

Section 1-105. **Territorial Application of the Act; Parties' Power to Choose Applicable Law.**

Application.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

Effect of contrary agreement.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.

Applicability of the Article on Investment Securities. Section 8-106.

Policy and scope of the Article on Secured Transactions. Sections 9-102 and 9-103.

Section 1-106. **Remedies to Be Liberally Administered.**

Liberal administration of remedies.

(1) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Act or by other rule of law.

Enforcement

(2) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Waiver or renunciation.

Section 1-107. **Waiver or Renunciation of Claim or Right After Breach.** Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.



HeinOnline -- 1963 vol. II 857 1963

Severability.

Section 1-108. **Severability.** If any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Captions included.

Section 1-109. **Section Captions.** Section captions are parts of this Act.

## Part 2

## General Definitions and Principles of Interpretation

Definitions:

Section 1-201. **General Definitions.** Subject to additional definitions contained in the subsequent articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

"Action."

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

"Aggrieved party."

(2) "Aggrieved party" means a party entitled to resort to a remedy.

"Agreement."

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Act (Section 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this Act, if applicable; otherwise by the law of contracts (Section 1-103).

"Bank."

(4) "Bank" means any person engaged in the business of banking.

"Bearer."

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

"Bill of lading."

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding



HeinOnline -- 1963 vol. II 858 1963

goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank. "Branch."

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence. "Burden of establishing."

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt. "Buyer in ordinary course of business." "Buying."

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court. "Conspicuous."

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Act and any other applicable rules of law. "Contract."

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate. "Creditor."

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim. "Defendant."



HeinOnline -- 1963 vol. II 859 1963

"Delivery." (14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

"Document of title." (15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

"Fault." (16) "Fault" means wrongful act, omission or breach.

"Fungible." (17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Act to the extent that under a particular agreement or document unlike units are treated as equivalents.

"Genuine." (18) "Genuine" means free of forgery or counterfeiting.

"Good faith." (19) "Good faith" means honesty in fact in the conduct or transaction concerned.

"Holder." (20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

"Honor." (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

"Insolvency proceedings." (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

"Insolvent." (23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.



HeinOnline -- 1963 vol. II 860 1963

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency. "Money."

(25) A person has "notice" of a fact when: "Notice."

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Act. "Knows." "Knowledge." "Discover." "Learn."

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when: "Notifies." "Gives." "Receives."

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and Effective time of notice.



HeinOnline -- 1963 vol. II 861 1963

that the transaction would be materially affected by the information.

"Organization." (28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Party." "Third party." (29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this Act.

"Person." (30) "Person" includes an individual or an organization.

"Presumption." "Presumed." (31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

"Purchase." (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

"Purchaser." (33) "Purchaser" means a person who takes by purchase.

"Remedy." (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

"Representative." (35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

"Rights." (36) "Rights" includes remedies.

"Security interest." (37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer



HeinOnline -- 1963 vol. II 862 1963

may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending. "Send."

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing. "Signed."

(40) "Surety" includes guarantor. "Surety."

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like. "Telegram."

(42) "Term" means that portion of an agreement which relates to a particular matter. "Term."

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery. "Unauthorized."

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (Section 3-303, 4-208 and 4-209) a person gives "value" for rights if he acquires them: "Value."

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or



HeinOnline -- 1963 vol. II 863 1963

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

"Warehouse receipt."

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

"Written." "Writing."

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Third party document as evidence.

Section 1-202. **Prima Facie Evidence by Third Party Documents.** A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Obligation of good faith.

Section 1-203. **Obligation of Good Faith.** Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

Section 1-204. **Time; Reasonable Time; "Seasonably".**

Reasonable time defined.

(1) Whenever this Act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

Section 1-205. **Course of Dealing and Usage of Trade.**

Course of dealing defined.

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

Usage of trade defined.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place,



HeinOnline -- 1963 vol. II 864 1963

vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

Effect.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

Consistent construction.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

Place of performance.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

Evidence not admissible unless notice given.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

Section 1-206. **Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.**

Contract for sale of personal property over $5,000 not enforceable unless evidenced by writing.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

Exclusions.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (Section 2-201) nor of securities (Section 8-319) nor to security agreements (Section 9-203).

Effect—reservation of rights—sufficiency.

Section 1-207. **Performance or Acceptance Under Reservation of Rights.** A party who with explicit reservation of rights performs or promises performance or



HeinOnline -- 1963 vol. II 865 1963

assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

Construction of option to accelerate.

Section 1-208. **Option to Accelerate at Will.** A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

## ARTICLE 2

## SALES

### Part 1

### Short Title, General Construction and Subject Matter

Title—Uniform Commercial Code—Sales.

Section 2-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Sales.

Scope—transactions in goods—exclusions.

Section 2-102. **Scope; Certain Security and Other Transactions Excluded From This Article.** Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Definitions:

Section 2-103. **Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

"Buyer."

(a) "Buyer" means a person who buys or contracts to buy goods.

"Good faith."

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

"Receipt."

(c) "Receipt" of goods means taking physical possession of them.



HeinOnline -- 1963 vol. II 866 1963

(d) "Seller" means a person who sells or contracts to sell goods. "Seller."

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are: Index to other definitions.

"Acceptance". Section 2-606.
"Banker's credit". Section 2-325.
"Between merchants". Section 2-104.
"Cancellation". Section 2-106(4).
"Commercial unit". Section 2-105.
"Confirmed credit". Section 2-325.
"Conforming to contract". Section 2-106.
"Contract for sale". Section 2-106.
"Cover". Section 2-712.
"Entrusting". Section 2-403.
"Financing agency". Section 2-104.
"Future goods". Section 2-105.
"Goods". Section 2-105.
"Identification". Section 2-501.
"Installment contract". Section 2-612.
"Letter of Credit". Section 2-325.
"Lot". Section 2-105.
"Merchant". Section 2-104.
"Overseas". Section 2-323.
"Person in position of seller". Section 2-707.
"Present sale". Section 2-106.
"Sale". Section 2-106.
"Sale on approval". Section 2-326.
"Sale or return". Section 2-326.
"Termination". Section 2-106.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3-104.
"Consignee". Section 7-102.
"Consignor". Section 7-102.
"Consumer goods". Section 9-109.
"Dishonor". Section 3-507.
"Draft". Section 3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 2-104. **Definitions: "Merchant"; "Between Merchants"; "Financing Agency".**

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds him- "Merchant."



HeinOnline -- 1963 vol. II 867 1963

self out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

"Financing agency."

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2-707).

"Between merchants."

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Section 2-105. **Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit".**

"Goods."

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

Existing goods. "Future" goods.

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

Part interest.

(3) There may be a sale of a part interest in existing identified goods.

Undivided share—bulk fungible goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the



HeinOnline -- 1963 vol. II 868 1963

extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common. Owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract. "Lot."

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. "Commercial unit."

Section 2-106. **Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; Cancellation".**

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract. "Contract." "Agreement." "Contract for sale." "Sale." "Present sale."

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract. "Conforming."

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives. "Termination."

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. "Cancellation."

Section 2-107. **Goods to Be Severed From Realty: Recording.**



HeinOnline -- 1963 vol. II 869 1963

Contracts contemplating severance.

(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

Recording—notice.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

## Part 2

## Form, Formation and Readjustment of Contract

Section 2-201. **Formal Requirements; Statute of Frauds.**

Contract for sale of goods over $500 not enforceable unless evidenced by writing.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written



HeinOnline -- 1963 vol. II 870 1963

notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable: Exceptions.

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or Specially manufactured goods.

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or Admission.

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606). Acceptance.

Section 2-202. **Final Written Expressions: Parol or Extrinsic Evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented: Parol evidence—final written expression.

(a) by course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208); and Course of dealing—usage of trade.

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. Additional terms.

Section 2-203. **Seals Inoperative.** The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer. Seals inoperative.

Section 2-204. **Formation in General.**



HeinOnline -- 1963 vol. II 871 1963

Formation of contracts for sale.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonable certain basis for giving an appropriate remedy.

Firm offers.

Section 2-205. **Firm Offers.** An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 2-206. **Offer and Acceptance in Formation of Contract.**

Offers—construction.

(1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

Lapse.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 2-207. **Additional Terms in Acceptance or Confirmation.**



HeinOnline -- 1963 vol. II 872 1963

Acceptance—construction of additional terms.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

Conduct of parties.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

Section 2-208. **Course of Performance or Practical Construction.**

Course of performance.

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

Construction.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1-205).

Relevancy.

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.



HeinOnline -- 1963 vol. II 873 1963

Section 2-209. **Modification, Rescission and Waiver.**

No consideration. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

Modification or rescission. (2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

Statute of frauds. (3) The requirements of the statute of frauds section of this Article (Section 2-201) must be satisfied if the contract as modified is within its provisions.

Waiver. (4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

Retraction. (5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 2-210. **Delegation of Performance; Assignment of Rights.**

Delegation of performance. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

Assignment of rights. (2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

Prohibition of assignment. (3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

Terms of assignment. (4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar



HeinOnline -- 1963 vol. II 874 1963

general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2-609). Demand for assurances.

## Part 3

## General Obligation and Construction of Contract

Section 2-301. **General Obligation of Parties.** The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. Obligations of seller and buyer.

Section 2-302. **Unconscionable Contract or Clause.**

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. Unconscionable contract.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. Hearing.

Section 2-303. **Allocation or Division of Risks.** Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. Allocation—division of risk.

Section 2-304. **Price Payable in Money, Goods, Realty, or Otherwise.**

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer. Payment of price—money or otherwise.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and Interest in realty.



HeinOnline -- 1963 vol. II 875 1963

the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

Section 2-305. **Open Price Term.**

Price left open—reasonableness.

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

Good faith.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

Option to cancel.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

Obligations where no contract.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

Section 2-306. **Output, Requirements and Exclusive Dealings.**

Output contract.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

Exclusive dealing.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation



HeinOnline -- 1963 vol. II 876 1963

by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Delivery—single or lots.

Section 2-307. **Delivery in Single Lot or Several Lots.** Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

Place for delivery.

Section 2-308. **Absence of Specified Place for Delivery.** Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

Section 2-309. **Absence of Specific Time Provisions; Notice of Termination.**

Time for delivery.

(1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

Duration.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

Notice of termination.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Section 2-310. **Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.** Unless otherwise agreed:

Payment due.

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

Reservation—inspection.

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender



HeinOnline -- 1963 vol. II 877 1963

the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2-513); and

Documents of title.

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

Credit period.

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Section 2-311. **Options and Cooperation Respecting Performance.**

Particulars of performance.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

Specifications—options.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of Section 2-319 specifications or arrangements relating to shipment are at the seller's option.

Additional remedies.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Section 2-312. **Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.**



HeinOnline -- 1963 vol. II 878 1963

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that: Warranties of seller.

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have. Specific exclusion or modification.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. Warranty against infringement.

Section 2-313. **Express Warranties by Affirmation, Promise, Description, Sample.**

(1) Express warranties by the seller are created as follows: Express warranties of seller.

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise. Affirmation.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description. Description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model. Sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely Use of words.



HeinOnline -- 1963 vol. II 879 1963

Opinion only.

of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Section 2-314. **Implied Warranty: Merchantability; Usage of Trade.**

Implied warranty—merchantable goods.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

Qualifications.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

Other implied warranties.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

Implied warranty—fitness for purpose.

Section 2-315. **Implied Warranty: Fitness for Particular Purpose.** Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2-316. **Exclusion or Modification of Warranties.**



HeinOnline -- 1963 vol. II 880 1963

Exclusion or modification of warranties—reasonable construction.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

Conspicuous language.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

"As is."

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

Buyer's examination.

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

Course of dealing—usage.

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

Remedies limited.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

Construction—intention of parties.

Section 2-317. **Cumulation and Conflict of Warranties Express or Implied.** Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which



HeinOnline -- 1963 vol. II 881 1963

warranty is dominant. In ascertaining that intention the following rules apply:

Specifications. (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

Sample from bulk. (b) A sample from an existing bulk displaces inconsistent general language of description.

Express warranties. (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Extension of warranties. Section 2-318. **Third Party Beneficiaries of Warranties Express or Implied.** A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Section 2-319. **F. O. B. and F. A. S. Terms.**

F.O.B. defined—duties of seller. (1) Unless otherwise agreed the term F. O. B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F. O. B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F. O. B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (Section 2-503);

(c) when under either (a) or (b) the term is also F. O. B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F. O. B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of



HeinOnline -- 1963 vol. II 882 1963

this Article on the form of bill of lading (Section 2-323).

F.A.S. defined—duties of seller.

(2) Unless otherwise agreed the term F. A. S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

Duty of buyer—instructions.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) of subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

Payment against tender of documents

(4) Under the term F. O. B. vessel or F. A. S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2-320. **C. I. F. and C. & F. Terms.**

C.I.F. defined.

C. & F. or C.F. defined.

(1) The term C. I. F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C. F. means that the price so includes cost and freight to the named destination.

Duties of seller.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C. I. F. destination or its equivalent requires the seller at his own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills



HeinOnline -- 1963 vol. II 883 1963

of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

Obligations.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C. I. F. term except the obligation as to insurance.

Payment against tender of documents.

(4) Under the term C. I. F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2-321. **C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival.** Under a contract containing a term C. I. F. or C. & F.

"Net landed weights," etc.—estimate—adjustment.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after



HeinOnline -- 1963 vol. II 884 1963

final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss. Seller's risk.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. Inspection.

Section 2-322. **Delivery "Ex-Ship."**

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged. "Ex-ship" defined.

(2) Under such a term unless otherwise agreed: Duties of seller.

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

Section 2-323. **Form of Bill of Lading Required in Overseas Shipment; "Overseas".**

(1) Where the contract contemplates overseas shipment and contains a term C. I. F. or C. & F. or F. O. B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C. I. F. or C. & F., received for shipment. Negotiable bill of lading.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise Tender.



HeinOnline -- 1963 vol. II 885 1963

agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of Section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

"Overseas" defined.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

"No arrival, no sale," etc.— duties of seller.

Section 2-324. "**No Arrival, No Sale**" **Term.** Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

Buyer's rights.

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identify goods (Section 2-613).

Section 2-325. "**Letter of Credit**" **Term; "Confirmed Credit."**

Letter of credit

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

Suspension of payment.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

Definitions:

(3) Unless otherwise agreed the term "letter of



HeinOnline -- 1963 vol. II 886 1963

credit'' or ''banker's credit'' in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term ''confirmed credit'' means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

Section 2-326. **Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.**

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a ''sale on approval'' if the goods are delivered primarily for use; and "Sale on approval."

(b) a ''sale or return'' if the goods are delivered primarily for resale. "Sale or return."

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession. Claims of buyer's creditors.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as ''on consignment'' or ''on memorandum''. However, this subsection is not applicable if the person making delivery: Consignment sales— creditors' rights. Exceptions.

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or



HeinOnline -- 1963 vol. II 887 1963

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

Separate contract.

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2-202).

Section 2-327. **Special Incidents of Sale on Approval and Sale or Return.**

Sale on approval.

(1) Under a sale on approval unless otherwise agreed:

Risk of loss—title.

(a) although the good are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

Acceptance.

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

Risk of return.

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

Sale or return.

(2) Under a sale or return unless otherwise agreed:

Option to return.

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

Risk of return.

(b) the return is at the buyer's risk and expense.

Sale by auction.

Section 2-328. **Sale by Auction.**

Each lot is separate sale.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

Completed sale—bidding.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.



HeinOnline -- 1963 vol. II 888 1963

Sale with reserve.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

Sale without reserve.

Retraction.

Bid on seller's behalf—notice—remedies of buyer.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

## Part 4

## Title, Creditors and Good Faith Purchasers

Passing of title to goods.

Section 2-401. **Passing of Title; Reservation for Security; Limited Application of This Section.** Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

Identification to contract.

Reservation—security interest.

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicity agreed on by the parties.

Title passes on completion of performance.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller com-



HeinOnline -- 1963 vol. II 889 1963

pletes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

Delivery without moving goods.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

Revesting of title.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

Section 2-402. **Rights of Seller's Creditors Against Sold Goods.**

Rights of seller's creditors.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2-502 and 2-716).

Remedies for fraud.

(2) A creditor of the seller may treat a sale or an identifcation of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.



HeinOnline -- 1963 vol. II 890 1963

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller: Rights of creditors not impaired.

(a) under the provisions of the Article on Secured Transactions (Article 9); or Secured transactions.

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. Preference—pre-existing claim.

Section 2-403. **Power to Transfer; Good Faith Purchase of Goods; "Entrusting".**

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though: Extent of buyer's title. Purchaser in good faith.

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business. Entrusted goods—transfer of title.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any conditioned expressed between parties to the delivery or acquiescence and regardless of whether the procurement "Entrusting" defined.



HeinOnline -- 1963 vol. II 891 1963

of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

Rights of others.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7).

## Part 5

## Performance

Section 2-501. **Insurable Interest in Goods; Manner of Identification of Goods.**

Buyer's special property and insurable interest.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

Indentification of goods to contract.

(a) when the contract is made if it is for sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

Seller's retention.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

Insurable interest not impaired.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.



HeinOnline -- 1963 vol. II 892 1963

Section 2-502. **Buyer's Right to Goods on Seller's Insolvency.**

Buyer's right to goods—seller's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immedaitely preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

Conformance to contract.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 2-503. **Manner of Seller's Tender of Delivery.**

Duties of seller—tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreemnt and this Article, and in particular:

Reasonable hour.

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

Facilities.

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

Shipment.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

Particular destination.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

Delivery by bailee without movement—requirements of tender.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or



HeinOnline -- 1963 vol. II 893 1963

procure acknowledgement by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

Delivery of documents.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

Duties of seller—shipment.

Section 2-504. **Shipment by Seller.** Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

Delivery to carrier.

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

Documents.

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

Notice to buyer.

(c) promptly notify the buyer of the shipment.



HeinOnline -- 1963 vol. II 894 1963

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

Section 2-505. **Seller's Shipment Under Reservation.**

Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

Security interest.

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

Possession of goods as security.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

Effect of reservation.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

Section 2-506. **Rights of Financing Agency.**

Payment by financing agency—rights acquired.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

Right to reimbursement.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.



HeinOnline -- 1963 vol. II 895 1963

Section 2-507. **Effect of Seller's Tender; Delivery on Condition.**

Tender of delivery—condition to buyer's duty to accept and pay.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

Payment—condition to buyer's right to goods.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Section 2-508. **Cure by Seller of Improper Tender or Delivery; Replacement.**

Seller may cure nonconforming tender—contract time.

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

Notice to buyer—further time.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 2-509. **Risk of Loss in the Absence of Breach.**

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

No particular destination—risk of loss to buyer on delivery to carrier.

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

Particular destination—risk of loss to buyer on tender.

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

Goods held by bailee—buyer's risk—conditions.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:



HeinOnline -- 1963 vol. II 896 1963

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgement by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of Section 2-503.

Receipt or tender—buyer's risk.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

Limitations.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

Section 2-510. **Effect of Breach on Risk of Loss.**

Nonconforming tender—seller's risk.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

Revocation—seller's risk.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

Buyer's breach—buyer's risk.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Section 2-511. **Tender of Payment by Buyer; Payment by Check.**

Duties of buyer—tender of payment.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

Sufficiency.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal ten-



HeinOnline -- 1963 vol. II 897 1963

der and gives any extension of time reasonably necessary to procure it.

Conditional payment.

(3) Subject to the provisions of this Act on the effect of an instrument on an obligation (Section (3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 2-512. **Payment by Buyer Before Inspection.**

Payment before inspection.

(1) Where the contract requires payment before inspection non conformity of the goods does not excuse the buyer from so making payment unless:

(a) the non conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Act (Section 5-114).

Effect.

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 2-513. **Buyer's Right to Inspection of Goods.**

Buyer's right to inspection.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

Expenses.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

Contract provisions— no right to inspect.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or in other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.



HeinOnline -- 1963 vol. II 898 1963

Inspection by agreement.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Delivery of documents—acceptance—payment.

Section 2-514. **When Documents Deliverable on Acceptance; When on Payment.** Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

Preserving evidence.

Section 2-515. **Preserving Evidence of Goods in Dispute.** In furtherance of the adjustment of any claim or dispute:

Party inspection.

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

Third party inspection.

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

## Part 6

## Breach, Repudiation and Excuse

Nonconformance—buyer's rights.

Section 2-601. **Buyer's Rights on Improper Delivery.** Subject to the provisions of this Article on breach in installment contracts (Section 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

(a) reject the whole; or

(b) accept the whole; or



HeinOnline -- 1963 vol. II 899 1963

(c) accept any commercial unit or units and reject the rest.

Section 2-602. **Manner and Effect of Rightful Rejection.**

Notice of rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604):

Wrongful use.

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

Duty to care for goods for seller.

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

Obligation.

(c) the buyer has no further obligations with regard to goods rightfully rejected.

Seller's rights.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (Section 2-703).

Section 2-603. **Merchant Buyer's Duties as to Rightfully Rejected Goods.**

Duties of buyer—rejected goods.

(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his

Instructions.

possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reason-

Sale.

able efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity

Expenses.

for expenses is not forthcoming.

Buyer's rights to reimbursement.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of



HeinOnline -- 1963 vol. II 900 1963

the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

Good faith of buyer.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Buyer's options—salvage—rejected goods.

Section 2-604. **Buyer's Options as to Salvage of Rightfully Rejected Goods.** Subject to the provisions of the immediately preceding section on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Section 2-605. **Waiver of Buyer's Objections by Failure to Particularize.**

Buyer's waiver—unstated defects.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

Defects on face of documents.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

Section 2-606. **What Constitutes Acceptance of Goods.**

Acceptance of goods defined.

(1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or



HeinOnline -- 1963 vol. II 901 1963

(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 2-607. **Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.**

Duty to pay. (1) The buyer must pay at the contract rate for any goods accepted.

Rejection precluded. (2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non conformity.

(3) Where a tender has been accepted:

Notice of breach. (a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

Notice of suit. (b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

Burden of proof. (4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

Notice of suit for breach of warranty. (a) he may give his seller written notice of the litigation. If the notice states that the seller may come



HeinOnline -- 1963 vol. II 902 1963

in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

Seller may demand control of litigation.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expenses and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

Hold harmless provision.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2-312).

Section 2-608. **Revocation of Acceptance in Whole or in Part.**

Revocation of acceptance.

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non conformity substantially impairs its value to him if he has accepted it:

Failure to cure.

(a) on the reasonable assumption that its non conformity would be cured and it has not been seasonably cured; or

Difficulty of discovery— seller's assurances.

(b) without discovery of such non conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

Reasonable time for discovery— notice to seller.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

Buyer's duties— goods.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.



HeinOnline -- 1963 vol. II 903 1963

Section 2-609. **Right to Adequate Assurance of Performance.**

Right to assurance of performance.

Written demand.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

Commercial standards.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

Rights not prejudiced.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Failure to give assurances—repudiation.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Rights of parties—anticipatory repudiation.

Section 2-610. **Anticipatory Repudiation.** When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

Section 2-611. **Retraction of Anticipatory Repudiation.**



HeinOnline -- 1963 vol. II 904 1963

Retraction of anticipatory repudiation—time.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

Method of retraction.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section 2-609).

Reinstatement of rights.

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 2-612. **"Installment Contract"; Breach.**

"Installment contract" defined.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

Buyer may reject nonconforming installment.

(2) The buyer may reject any installment which is non conforming if the non conformity substantially impairs the value of that installment and cannot be cured or if the non conformity is a defect in the required documents; but if the non conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

Impairment of value—breach of contract.

(3) Whenever non conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Damage to goods without fault of parties.

Section 2-613. **Casualty to Identified Goods.** Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2-324) then:



HeinOnline -- 1963 vol. II 905 1963

Total loss.

(a) if the loss is total the contract is avoided; and

Buyer's options.

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Section 2-614. **Substituted Performance.**

Substitute performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

Failure of payment— equivalent tender.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Section 2-615. **Excuse by Failure of Presupposed Conditions.** Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

Seller excused— failure of presupposed conditions.

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

Seller may allocate.

(b) Where the causes mention in paragraph (a) affect only a part of the seller's capacity to perform, he



HeinOnline -- 1963 vol. II 906 1963

must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. Notice to buyer.

Section 2-616. **Procedure on Notice Claiming Excuse.**

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2-612), then also as to the whole: Options of buyer on notice of delay or allocation.

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

## Part 7

## Remedies

Section 2-701. **Remedies for Breach of Collateral Contracts Not Impaired.** Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. Remedies not impaired.

Section 2-702. **Seller's Remedies on Discovery of Buyer's Insolvency.** Buyer's insolvency—seller may demand cash.



HeinOnline -- 1963 vol. II 907 1963

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2-705).

Reclamation of goods.

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

Subject to purchase in good faith.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

Seller's remedies—buyer's breach of contract.

Section 2-703. **Seller's Remedies in General.** Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (Section 2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (Section 2-706);

(e) recover damages for non-acceptance (Section 2-708) or in a proper case the price (Section 2-709);

(f) cancel.

Section 2-704. **Seller's Right to Identify Goods to the**



HeinOnline -- 1963 vol. II 908 1963

**Contract Notwithstanding Breach or to Salvage Unfinished Goods.**

(1) An aggrieved seller under the preceding section may: Seller's rights—buyer's breach.

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. Completion or salvage.

Section 2-705. **Seller's Stoppage of Delivery in Transit or Otherwise.**

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods. Seller's right to stoppage in transitu—buyer's insolvency.

(2) As against such buyer the seller may stop delivery until: Options.

(a) receipt of the goods by the buyer; or

(b) acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgement to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as Notice to bailee.



HeinOnline -- 1963 vol. II 909 1963

to enable the bailee by reasonable diligence to prevent delivery of the goods.

Duties of bailee.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

Negotiable document of title.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

Notice to carrier by consignor.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 2-706. **Seller's Resale Including Contract for Resale.**

Seller may resell goods—recover deficiency.

(1) Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance therof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

Method of sale.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, maner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

Private sale—notice.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

Public sale.

(4) Where the resale is at public sale:

Identified goods.

(a) only identified goods can be sold except where



HeinOnline -- 1963 vol. II 910 1963

there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and — Place—notice.

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and — Notification of sale.

(d) the seller may buy. — Seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section. — Purchaser in good fatih.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711). — Accounting.

Section 2-707. **"Person in the Position of a Seller".**

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller. — "Person in position of seller" defined.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710). — Rights.

Section 2-708. **Seller's Damages for Non-acceptance or Repudiation.**

(1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-acceptance or — Seller's measure of damages—market price.



HeinOnline -- 1963 vol. II 911 1963

repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

Measure of damages—profit.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

Section 2-709. **Action for the Price.**

Seller's action for price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

Duty of seller regarding goods.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

Damages for nonacceptance.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

Seller's incidental damages.

Section 2-710. **Seller's Incidental Damages.** Incidental damages to an aggrieved seller include any commerc-



HeinOnline -- 1963 vol. II 912 1963

ially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Section 2-711. **Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.**

Buyer's remedies.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (Section 2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this Article (Section 2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this Article (Section 2-716).

Buyer's security interest—resale.

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

Section 2-712. **"Cover"; Buyer's Procurement of Substitute Goods.**

Buyer may "cover."

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or



HeinOnline -- 1963 vol. II 913 1963

contract to purchase goods in substitution for those due from the seller.

Measure of damages.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

Other remedies not barred.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

Section 2-713. **Bnyer's Damages for Non-Delivery or Repudiation.**

Buyer's measure of damages—nondelivery or repudiation of seller.

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

Market price.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Section 2-714. **Buyer's Damages for Breach in Regard to Accepted Goods.**

Buyer's measure of damages—breach of contract.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

Breach of warranty.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

Additional recovery.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Section 2-715. **Buyer's Incidental and Consequential Damages.**



HeinOnline -- 1963 vol. II 914 1963

Incidental damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

Consequential damages.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

Section 2-716. **Buyer's Right to Specific Performance or Recovery of Goods.**

Specific performance.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

Decree.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

Recovery of goods.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Section 2-717. **Deduction of Damages From the Price.** The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

Buyer may deduct damage from price.

Section 2-718. **Liquidation or Limitation of Damages; Deposits.**

Liquidated damages.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is



HeinOnline -- 1963 vol. II 915 1963

reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

Void penalty.

Restitution to buyer.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars ($500), whichever is smaller.

Offset to seller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

Payment in goods—treatment.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2-706).

Section 2-719. **Contractual Modification or Limitation of Remedy.**

Contract may provide additional remedies—limitations.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of



HeinOnline -- 1963 vol. II 916 1963

damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

Failure of remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

Limitation, exclusion—consequential damages.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconsconionable but limitation of damages where the loss is commercial is not.

Construction—antecedent breach.

Section 2-720. **Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach.** Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Remedies for fraud.

Section 2-721. **Remedies for Fraud.** Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Proper parties to suit against third party—injury to goods

Section 2-722. **Who Can Sue Third Parties for Injury to Goods.** Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;



HeinOnline -- 1963 vol. II 917 1963

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

Section 2-723. **Proof of Market Price: Time and Place.**

Determination of market price.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

Reasonable substitute.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

Notice of evidence.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Admissibility of market quotations as evidence.

Section 2-724. **Admissibility of Market Quotations.** Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Section 2-725. **Statute of Limitations in Contracts for Sale.**



HeinOnline -- 1963 vol. II 918 1963

Time for suit—breach of contract.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

Time of accrual of action.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

Termination—other remedies.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

Application of law.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

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## ARTICLE 3

## COMMERCIAL PAPER

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### Part 1

### Short Title, Form and Interpretation

Title—Uniform Commercial Code—Commercial Paper.

Section 3-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

Section 3-102. **Definitions and Index of Definitions.**

Definitions:

(1) In this Article unless the context otherwise requires:



HeinOnline -- 1963 vol. II 919 1963

"Issue." (a) "Issue" means the first delivery of an instrument to a holder or a remitter.

"Order." (b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

"Promise." (c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

"Secondary party." (d) "Secondary party" means a drawer or endorser.

"Instrument." (e) "Instrument" means a negotiable instrument.

Index to definitions. (2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". Section 3-410.
"Accommodation party". Section 3-415.
"Alteration". Section 3-407.
"Certificate of deposit". Section 3-104.
"Certification". Section 3-411.
"Check". Section 3-104.
"Definite time". Section 3-109.
"Dishonor". Section 3-507.
"Draft". Section 3-104.
"Holder in due course". Section 3-302.
"Negotiation". Section 3-202.
"Note". Section 3-104.
"Notice of dishonor". Section 3-508.
"On demand". Section 3-108.
"Presentment". Section 3-504.
"Protest". Section 3-509.
"Restrictive Indorsement". Section 3-205.
"Signature". Section 3-401.

(3) The following definitions in other Articles apply to this Article:

"Account". Section 4-104.
"Banking Day". Section 4-104.
"Clearing house". Section 4-104.
"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Depositary Bank". Section 4-105.
"Documentary Draft". Section 4-104.



HeinOnline -- 1963 vol. II 920 1963

"Intermediary Bank". Section 4-105.
"Item". Section 4-104.
"Midnight deadline". Section 4-104.
"Payor bank". Section 4-105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 3-103. **Limitations on Scope of Article.**

Scope of articles—subject to other provisions.

(1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9).

Section 3-104. **Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note".**

Requirements—negotiable instrument.

(1) Any writing to be a negotiable instrument within this Article must:

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) a "draft" ("bill of exchange") if it is an order; "Draft."

(b) a "check" if it is a draft drawn on a bank and payable on demand; "Check."

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it; "Certificate of deposit."

(d) a "note" if it is a promise other than a certificate of deposit. "Note."

Non-negotiable instruments—reference.

(3) As used in other Articles of this Act, and as the context may require, the terms "draft", "check", "cer-



HeinOnline -- 1963 vol. II 921 1963

tificate of deposit" and "note" may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable.

Section 3-105. **When Promise or Order Unconditional.**

Unconditional promise or order defined.

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

Section 3-106. **Sum Certain.**



HeinOnline -- 1963 vol. II 922 1963

Sum certain defined.

(1) The sum payable is a sum certain even though it is to be paid:

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Section 3-107. **Money.**

Money defined.

(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

Payable on demand defined.

Section 3-108. **Payable on Demand.** Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

Section 3-109. **Definite Time.**

Payable at definite time defined.

(1) An instrument is payable at a definite time if by its terms it is payable;

(a) on or before a stated date or at a fixed period after a stated date; or



HeinOnline -- 1963 vol. II 923 1963

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

Instrument payable on uncertain event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

Section 3-110. **Payable to Order.**

Payable to order defined.

(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."



HeinOnline -- 1963 vol. II 924 1963

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

Payable to bearer defined.

Section 3-111. **Payable to Bearer.** An instrument is payable to bearer when by its terms it is payable to:

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

Section 3-112. **Terms and Omissions Not Affecting Negotiability.**

Negotiability not affected—conditions.

(1) The negotiability of an instrument is not affected by:

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (Section 3-801) to the effect that the order is effective only if no other part has been honored.

Illegal terms not validated.

(2) Nothing in this section shall validate any term which is otherwise illegal.



HeinOnline -- 1963 vol. II 925 1963

Seal.

Section 3-113. **Seal.** An instrument otherwise negotiable is within this Article even though it is under a seal.

Section 3-114. **Date, Antedating, Postdating.**

Determination of date payable.

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

Section 3-115. **Incomplete Instruments.**

Incomplete instrument— enforcement when completed.

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

Unauthorized completion.

(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

Enforcement— payable to more than one person.

Section 3-116. **Instruments Payable to Two or More Persons.** An instrument payable to the order of two or more persons:

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

Instruments payable— descriptive words.

Section 3-117. **Instruments Payable With Words of Description.** An instrument made payable to a named person with the addition of words describing him:

Agent or officer.

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;



HeinOnline -- 1963 vol. II 926 1963

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him; Fiduciary.

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties. Payee.

Section 3-118. **Ambiguous Terms and Rules of Construction.** The following rules apply to every instrument: Ambiguous terms—rules of construction.

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with Section 3-604 tenders full payment when the instrument is due.

Section 3-119. **Other Writings Affecting Instrument.**

(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement ex- Effect of other writings.



HeinOnline -- 1963 vol. II 927 1963

ecuted as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

Negotiability not affected.

(2) A separate agreement does not affect the negotiability of an instrument.

Instruments "payable through" bank—effect.

Section 3-120. **Instruments "Payable Through" Bank.** An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

Instruments payable at bank—effect.

Section 3-121. **Instruments Payable at Bank.** A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

Section 3-122. **Accrual of Cause of Action.**

Accrual of causes of action against maker or acceptor.

(1) A cause of action against a maker or an acceptor accrues:

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

Obligor.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

Drawer or endorser.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

Interest.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.



HeinOnline -- 1963 vol. II 928 1963

## Part 2

## Transfer and Negotiation

Section 3-201. **Transfer: Right to Indorsement.**

Transfer of instrument.

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

Transfer—security interest.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

Transfer for value—endorsement.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

Section 3-202. **Negotiation.**

Negotiation defined.

(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

Form of indorsement.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

Effect of indorsement.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

Effect of words accompanying indorsement.

(4) Words of assignment, condition, waiver, guaranty, limtiation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

Indorsement—wrong or misspelled name.

Section 3-203. **Wrong or Misspelled Name.** Where an instrument is made payable to a person under a misspel-



HeinOnline -- 1963 vol. II 929 1963

led name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

Section 3-204. **Special Indorsement; Blank Indorsement.**

Special indorsement.

(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

Indorsement in blank.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

Conversion to special indorsement.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Restrictive indorsements defined.

Section 3-205. **Restrictive Indorsements.** An indorsement is restrictive which either:

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the indorser or of another person.

Section 3-206. **Effect of Restrictive Indorsement.**

Effect of restricitve indorsement.

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

Notice— immediate transferor.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.



HeinOnline -- 1963 vol. II 930 1963

Duty of transferee—holder in due course.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", pay any bank", or like terms (subparagraphs (a) and (c) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

Duty of first taker—holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of Section 3-304).

Section 3-207. **Negotiation Effective Although It May Be Rescinded.**

Negotiation effective although subject to rescission.

(1) Negotiation is effective to transfer the instrument although the negotiation is:

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.



HeinOnline -- 1963 vol. II 931 1963

Reacquisition—further negotiation—discharge.

Section 3-208. **Reacquisition.** Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

## Part 3

## Rights of a Holder

Rights of holder.

Section 3-301. **Rights of a Holder.** The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

Section 3-302. **Holder in Due Course.**

Holder in due course defined.

(1) A holder in due course is a holder who takes the instrument:

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

Payee.

(2) A payee may be a holder in due course.

Holder not in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

Limited interest.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

Taking for value defined.

Section 3-303. **Taking for Value.** A holder takes the instrument for value:



HeinOnline -- 1963 vol. II 932 1963

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

Section 3-304. **Notice to Purchaser.**

(1) The purchaser has notice of a claim or defense if: Notice to purchaser.

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or Irregular instrument.

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged. Notice of voidable obligation.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty. Notice of breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know: Notice of overdue instrument.

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.



HeinOnline -- 1963 vol. II 933 1963

Knowledge of certain facts not notice of defense or claim.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

Effect of recording.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

Effective notice.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

Rights of holder in due course

Section 3-305. **Rights of a Holder in Due Course.** To the extent that a holder is a holder in due course he takes the instrument free from:

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except:

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and



HeinOnline -- 1963 vol. II 934 1963

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

Rights of holder—not in due course.

Section 3-306. **Rights of One Not Holder in Due Course.** Unless he has the rights of a holder in due course any person takes the instrument subject to:

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, nondelivery, or delivery for a special purpose (Section 3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

Section 3-307. **Burden of Establishing Signatures, Defenses and Due Course.**

Burden of proof—signatures.

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

Production of instrument.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

Defense shown—burden shifts.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.



HeinOnline -- 1963 vol. II 935 1963

## Part 4

## Liability of Parties

Section 3-401. **Signature.**

Liability on signature.

(1) No person is liable on an instrument unless his signature appears thereon.

Made by use of name, word, mark.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

Ambiguous signature—indorsement.

Section 3-402. **Signature in Ambiguous Capacity.** Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

Section 3-403. **Signature by Authorized Representative.**

Signature of authorized representatives.

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

Personal obligation.

(2) An authorized representative who signs his own name to an instrument:

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Officer of organization.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

Section 3-404. **Unauthorized Signatures.**

Unauthorized signature—personal obligation.

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he



HeinOnline -- 1963 vol. II 936 1963

ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. Ratification.

Section 3-405. **Imposters; Signature in Name of Payee.**

(1) An indorsement by any person in the name of a named payee is effective if: Effect of indorsement by imposter.

(a) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

Section 3-406. **Negligence Contributing to Alteration or Unauthorized Signature.** Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. Liability—negligent contribution to alteration or unauthorized signature.

Section 3-407. **Alteration.**

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in: Material alteration defined.

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or



HeinOnline -- 1963 vol. II 937 1963

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or its precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

Rights of subsequent holder in due course.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

Want or failure of consideration as defense.

Section 3-408. **Consideration.** Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (Section 3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Act under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

Section 3-409. **Draft Not an Assignment.**

Draft is not assignment.

(1) A check or other draft does not of itself operate as an assignment of any fund in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

Other liability not affected.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

Section 3-410. **Definition and Operation of Acceptance.**

Acceptance—form—operation.

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the



HeinOnline -- 1963 vol. II 938 1963

draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

Incomplete draft may be accepted.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

Completion of date.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

Section 3-411. **Certification of a Check.**

Check certification—discharge of drawers, indorsers.

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

No duty to certify.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

Lack of proper indorsement—discharge of drawer.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

Section 3-412. **Acceptance Varying Draft.**

Effects of acceptance varying draft.

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

Place of payment.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

Nonassent—discharge.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

Section 3-413. **Contract of Maker, Drawer and Acceptor.**

Liability to pay—maker.

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to Section 3-115 on incomplete instruments.

Drawer—dishonor and notice.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest



HeinOnline -- 1963 vol. II 939 1963

he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

Disclaimer.

Admissions.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

Section 3-414. **Contract of Indorser; Order of Liability.**

Liability of indorser.

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

Order of liability.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

Section 3-415. **Contract of Accommodation Party.**

Accommodation party defined.

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

Liability.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

Proof.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

Notice.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

Right of recourse.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.



HeinOnline -- 1963 vol. II 940 1963

Section 3-416. **Contract of Guarantor.**

"Payment guaranteed" defined.

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

"Collection guaranteed" defined.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

Words of guaranty.

(3) Words of guaranty which do not otherwise specify guarantee payment.

Effect of words of guaranty.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

Liability of user.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

Enforcement.

(6) Any guaranty written on the instrument is enforcible notwithstanding any statute of frauds.

Section 3-417. **Warranties on Presentment and Transfer.**

Warranties—presentment and transfer.

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:



HeinOnline -- 1963 vol. II 941 1963

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

"Without recourse."

(3) By transferring "without recourse" the trans-



HeinOnline -- 1963 vol. II 942 1963

feror limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

Finality of payment or acceptance.

Section 3-418. **Finality of Payment or Acceptance.** Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

Section 3-419. **Conversion of Instrument; Innocent Representative.**

Conversion defined.

(1) An instrument is converted when:

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

Measure of liability.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

Liability to true owner.

(3) Subject to the provisions of this Act concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

Nonliability—restrictive indorsement.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed



HeinOnline -- 1963 vol. II 943 1963

restrictively (Sections 3-205 and 3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

## Part 5

## Presentment, Notice of Dishonor and Protest

Section 3-501. **When Presentment, Notice of Dishonor, and Protest Necessary or Permissible.**

Presentment—necessity.

(1) Unless excused (Section 3-511) presentment is necessary to charge secondary parties as follows:

Acceptance.

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

Payment.

(b) presentment for payment is necessary to charge any indorser;

Effect of nonpresentment.

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in Section 3-502 (1) (b).

Notice of dishonor—necessity.

(2) Unless excused (Section 3-511):

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in Section 3-502 (1)(b).

Protest of dishonor—necessity.

(3) Unless excused (Section 3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and terri-



HeinOnline -- 1963 vol. II 944 1963

tories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

Indorsement after maturity.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

Section 3-502. **Unexcused Delay; Discharge.**

Effect of unexcused delay—discharge.

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

Section 3-503. **Time of Presentment.**

Determination—time for presentment.

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;



HeinOnline -- 1963 vol. II 945 1963

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

Determination—reasonable time.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, seven days after his indorsement.

Due on full business day.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

Reasonable hour—banking day.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

Section 3-504. **How Presentment Made.**

Presentment defined.

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

Methods of making presentment—proper persons—bank.

(2) Presentment may be made:

(a) by mail in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or



HeinOnline -- 1963 vol. II 946 1963

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in Section 4-210 presentment may be made in the manner and with the result stated in that section.

Section 3-505. **Rights of Party to Whom Presentment is Made.**

Rights of party to whom presentment is made.

(1) The party to whom presentment is made may without dishonor require:

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

Compliance.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

Section 3-506. **Time Allowed for Acceptance or Payment.**



HeinOnline -- 1963 vol. II 947 1963

Acceptance may be deferred.

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

Payment may be deferred.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

Section 3-507. **Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment.**

Dishonor defined.

(1) An instrument is dishonored when:

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

Right of recourse.

(2) Subject to any necessary of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

Return—lack of indorsement.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

Re-presentment—option to waive dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

Section 3-508. **Notice of Dishonor.**



HeinOnline -- 1963 vol. II 948 1963

Notice of dishonor— to whom and by whom.

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

Time for notice.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

Form of notice.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

Written notice.

(4) Written notice is given when sent although it is not received.

Partner.

(5) Notice to one partner is notice to each although the firm has been dissolved.

Insolvency proceedings.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

Dead or incompetent.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

Operation.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

Section 3-509. **Protest; Noting for Protest.**

Protest defined.

(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.



HeinOnline -- 1963 vol. II 949 1963

Terms.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

Notice.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

Time due.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

Noted for protest.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

Evidence of dishonor and notice—effect.

Section 3-510. **Evidence of Dishonor and Notice of Dishonor.** The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

Section 3-511. **Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein.**

Excused delay—presentment, protest, notice of dishonor.

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when:

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or



HeinOnline -- 1963 vol. II 950 1963

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when:

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

Later presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

Waiver.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

Effect in instrument

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

## Part 6

## Discharge

Section 3-601. **Discharge of Parties.**

Discharge.

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on:

(a) payment or satisfaction (Section 3-603); or

(b) tender of payment (Section 3-604); or

(c) cancellation or renunciation (Section 3-605); or

(d) impairment of right of recourse or of collateral (Section 3-606); or

(e) reacquisition of the instrument by a prior party (Section 3-208); or



HeinOnline -- 1963 vol. II 951 1963

(f) fraudulent and material alteration (Section 3-407); or

(g) certification of a check (Section 3-411); or

(h) acceptance varying a draft (Section 3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (Section 3-502).

Agreement or act.

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

Liability of all parties.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (Section 3-606).

Discharge does not affect holder in due course without notice.

Section 3-602. **Effect of Discharge Against Holder in Due Course.** No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

Section 3-603. **Payment or Satisfaction.**

Payment or satisfaction—extent of discharge.

(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or



HeinOnline -- 1963 vol. II 952 1963

(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

Consent of holder.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3-201).

Section 3-604. **Tender of Payment.**

Tender of payment.

(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

Refusal.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

Equivalent tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

Section 3-605. **Cancellation and Renunciation.**

Holder may discharge any party.

(1) The holder of an instrument may even without consideration discharge any party:

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

Surrender of instrument.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

Section 3-606. **Impairment of Recourse or of Collateral.**



HeinOnline -- 1963 vol. II 953 1963

Impairment of recourse or collateral by holder—effect.

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder:

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

Reservation of rights.

(2) By express reservation of rights against a party with a right of recourse the holder preserves:

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

## Part 7

## Advice of International Sight Draft

Section 3-701. **Letter of Advice of International Sight Draft.**

"Letter of advice" defined.

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

Rights of recipient bank.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.



HeinOnline -- 1963 vol. II 954 1963

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. Duty to pay.

## Part 8

## Miscellaneous

Section 3-801. **Drafts in a Set.**

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft. Drafts in a set.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds. Rights of negotiator.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (Section 4-407). Order of payment.

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. Discharge.

Section 3-802. **Effect of Instrument on Obligation for Which It Is Given.**

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation: Effect on underlying obligation.

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument Discharge—pro tanto.



HeinOnline -- 1963 vol. II 955 1963

and there is no recourse on the instrument against the underlying obligor; and

Suspension—pro tanto.

(b) in any other case the obligation is suspended pro tanto until the instrument is due or of it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

Taking of check.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

Notice of litigation to answerable third party.

Section 3-803. **Notice to Third Party.** Where a defendant is sued for breach of an obligation for which a third person is answerable over under this Article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound.

Actions by owner—lost instruments.

Section 3-804. **Lost, Destroyed or Stolen Instruments.** The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

Application.

Section 3-805. **Instruments Not Payable to Order or to Bearer.** This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.



HeinOnline -- 1963 vol. II 956 1963

# ARTICLE 4

# BANK DEPOSITS AND COLLECTIONS

## Part 1

## General Provisions and Definitions

Title—Uniform Commercial Code—Bank Deposits and Collections.

Section 4-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code —Bank Deposits and Collections.

Section 4-102. **Applicability.**

Application—other provisions.

(1) To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. In the event of conflict the provisions of this Article govern those of Article 3 but the provisions of Article 8 govern those of this Article.

Liability—law of place of bank or branch governs.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Section 4-103. **Variation by Agreement; Measure of Damages; Certain Action Constituting Ordinary Care.**

Variation by agreement.

(1) The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

Effect of rules and regulations.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.



HeinOnline -- 1963 vol. II 957 1963

Prima facie evidence—ordinary care.

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

Other reasonable procedures.

(4) The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

Measure of damages.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

Definitions:

Section 4-104. **Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

"Account."

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

"Afternoon."

(b) "Afternoon" means the period of a day between noon and midnight;

"Banking day."

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

"Clearing house."

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

"Customer."

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

"Documentary draft."

(f) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;



HeinOnline -- 1963 vol. II 958 1963

(g) "item" means any instrument for the payment of money even though it is not negotiable but does not include money; "Item."

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later; "Midnight deadline."

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor; "Properly payable."

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final; "Settle."

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business. "Suspends payments."

(2) Other definitions applying to this Article and the sections in which they appear are: Index to definitions.

"Collecting bank". Section 4-105.
"Depositary bank". Section 4-105.
"Intermediary bank". Section 4-105.
"Payor bank". Section 4-105.
"Presenting bank". Section 4-105.
"Remitting bank". Section 4-105.

(3) The following definitions in other Articles apply to this Article:

"Acceptance". Section 3-410.
"Certificate of deposit". Section 3-104.
"Certification". Section 3-411.
"Check". Section 3-104.
"Draft". Section 3-104.
"Holder in due course". Section 3-302.
"Notice of dishonor". Section 3-508.
"Presentment". Section 3-504.
"Protest". Section 3-509.
"Secondary Party". Section 3-102.



HeinOnline -- 1963 vol. II 959 1963

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 4-105. **"Depositary Bank"; "Intermediary Bank"; "Collecting Bank"; "Payor Bank"; "Presenting Bank"; "Remitting Bank".** In this Article unless the context otherwise requires:

"Depositary bank." (a) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

"Payor bank." (b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

"Intermediary bank." (c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

"Collecting bank." (d) "Collecting bank" means any bank handling the item for collection except the payor bank;

"Presenting bank." (e) "Presenting bank" means any bank presenting an item except a payor bank;

"Remitting bank." (f) "Remitting bank" means any payor or intermediary bank remitting for an item.

Branch is separate bank for computation of time. Section 4-106. **Separate Office of a Bank** A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3.

Section 4-107. **Time of Receipt of Items.**

Bank may fix cut-off hour. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its poistion for the day, a bank may fix an afternoon hour of two P. M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

Receipt after cut-off. (2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.



HeinOnline -- 1963 vol. II 960 1963

Section 4-108. **Delays.**

Collecting bank may waive time.

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Act for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

Delay excused.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Act or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

Section 4-109. **Process of Posting.**

Process of "posting" defined.

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;

(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item.

## Part 2

## Collection of Items: Depositary and Collecting Banks

Section 401. **Presumption and Duration of Agency Status of Collecting Banks and Provisional Status of Credits; Applicability of Article; Item Indorsed "Pay Any Bank."**

Collecting bank is agent of owner.

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of Section



HeinOnline -- 1963 vol. II 961 1963

4-211 and Sections 4-212 and 4-213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

Bank as holder after indorsement "Pay any bank."

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank.

Section 4-202. **Responsibility for Collection; When Action Seasonable.**

Responsibility of collecting bank.

(1) A collecting bank must use ordinary care in:

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of Section 4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in



HeinOnline -- 1963 vol. II 962 1963

transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing. Seasonable action.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. Nonliability of collecting bank.

Section 4-203. **Effect of Instructions.** Subject to the provisions of Article 3 concerning conversion of instruments (Section 3-419) and the provisions of both Article 3 and this Article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. Effect of instructions by transferor.

Section 4-204. **Methods of Sending and Presenting; Sending Direct to Payor Bank.**

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items. Methods of sending and presenting—authority of collecting bank.

(2) A collecting bank may send:

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. Place of presentment.



HeinOnline -- 1963 vol. II 963 1963

Section 4-205. **Supplying Missing Indorsement; No Notice From Prior Indorsement.**

Depositary bank may supply indorsement.

(1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

Effect—restrictive indorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

Transfer between banks.

Section 4-206. **Transfer Between Banks.** Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

Section 4-207. **Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time for Claims.**

Warranties of customer, collecting bank to payor.

(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) he has a good title to the item or is authoirzed to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or ob-



HeinOnline -- 1963 vol. II 964 1963

tained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

Warranties to transferee.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

Take up on dishonor.

In addition each customer and colecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

Liability for breach.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwith-



HeinOnline -- 1963 vol. II 965 1963

standing the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

Measure of damages.

Discharge.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

Section 4-208. **Secutrity Interest of Collecting Bank in Items, Accompanying Documents and Proceeds.**

Bank has security interest.

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

Scope of security interest.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

Final settlement.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that:



HeinOnline -- 1963 vol. II 966 1963

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of Section 9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

Bank as holder in due course.

Section 4-209. **When Bank Gives Value for Purposes of Holder in Due Course.** For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

Section 4-210. **Presentment by Notice of Item Not Payable by, Through or at a Bank; Liability of Secondary Parties.**

Collection by written notice—time.

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-505 by the close of the bank's next banking day after it knows of the requirement.

Dishonor—time—notice to secondary party.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under Section 3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

Section 4-211. **Media of Remittance; Provisional and Final Settlement in Remittance Cases.**

Authorized media of settlement.

(1) A collecting bank may take in settlement of an item:



HeinOnline -- 1963 vol. II 967 1963

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

Dishonor—time—liability to prior parties.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

Effect of final settlement.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the istrument or authorization, —at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsetion (1)(b),—at the time of the receipt of such remittance check or obligation; or



HeinOnline -- 1963 vol. II 968 1963

(c) if in a case covered by sub-paragraph (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

Section 4-212. **Right of Charge-Back or Refund.**

Revocation of settlement—charge back—refund.

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of Section 4-211 and subsections (2) and (3) of Section 4-213).

Draft—unpaid item—reimbursement.

(2) Within the time and manner prescribed by this section and Section 4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

Rights of depositary payor bank.

(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4-301).

Right to charge back not affected.

(4) The right to charge-back is not affected by:

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.



HeinOnline -- 1963 vol. II 969 1963

Failure to charge back or claim refund.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

Computation of credit—foreign currency.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Section 4-213. **Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal.**

Final payment defined.

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraphs (b), (c), or (d) the payor bank shall be accountable for the amount of the item.

Accounting—provisional settlement becomes final.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.



HeinOnline -- 1963 vol. II 970 1963

Bank's accountability.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of Section 4-211, subsection (2) of Section 4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

Credit to customer—right of withdrawal.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

Deposit final when made—withdrawal.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

Section 4-214. **Insolvency and Preference.**

Return of unpaid item.

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

Preferred claim against payor bank.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

Effect of suspended payment after provisional settlement.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of



HeinOnline -- 1963 vol. II 971 1963

certain time or the happening of certain events (subsection (3) of Section 4-211, subsections (1)(d), (2) and (3) of Section 4-213).

Preferred claim against collecting bank.

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

## Part 3

## Collection of Items: Payor Banks

Section 4-301. **Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor.**

Payor bank may revoke settlement of demand item.

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of Section 4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

Recovery on demand item.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

Time of dishonor.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

Return defined.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last col-



HeinOnline -- 1963 vol. II 972 1963

lecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

Payor bank accountable for late return.

Section 4-302. **Payor Bank's Responsibility for Late Return of Item.** In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of Section 4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

Section 4-303. **When Items Subject to Notice, Stop-Order, Legal Process or Setoff; Order in Which Items May be Charged or Certified.**

Limitation on effect of notice, stop order, process, set-off.

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

Acts of payor bank.

(a) accepted or certified the item;

(b) paid the item in cash;

(c) settled for the item without reserving a right to revoke the settlement and without having such



HeinOnline -- 1963 vol. II 973 1963

right under statute, clearing house rule or agreement;

(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1) (d) of Section 4-213 and Section 4-302 dealing with the payor bank's responsibility for late return of items.

Order of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

Part 4

**Relationship Between Payor Bank and Its Customer**

Section 4-401. **When Bank May Charge Customer's Acount.**

Rights of bank to charge customer's account.

(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original tenor of his altered item; or

(b) The tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Payor bank liable to customer for wrongful dishonor.

Section 4-402. **Bank's Liability to Customer for Wrongful Dishonor.** A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited ot actual damages



HeinOnline -- 1963 vol. II 974 1963

proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

Section 4-403. **Customer's Right to Stop Payment; Burden of Proof of Loss.**

Right of customer to stop payment.

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303.

Oral order.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

Burden of proof.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

No obligation to pay check six months old.

Section 4-404. **Bank Not Obligated to Pay Check More Than Six Months Old.** A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Section 4-405. **Death of Incompetence of Customer.**

Bank's authority not revoked until notice of incompetency or death.

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.



HeinOnline -- 1963 vol. II 975 1963

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

Section 4-406. **Customer's Duty to Discover and Report Unauthorized Signature or Alteration.**

Duty of customer to report irregularities.

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

Effect of failure to report.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank:

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

Exception—bank's lack of care.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

Time limitations.

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any



HeinOnline -- 1963 vol. II 976 1963

unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. Waiver of defense.

Section 4-407. **Payor Bank's Right to Subrogation on Improper Payment.** If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights: Payor bank has subrogation rights.

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

## Part 5

## Collection of Documentary Drafts

Section 4-501. **Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor.** A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its cutsomer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. Duties of bank taking documentary draft.

Section 4-502. **Presentment of "On Arrival" Drafts.** When a draft or the relevant instructions require pre- Duty of bank—arrival of goods.



HeinOnline -- 1963 vol. II 977 1963

sentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Section 4-503. **Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need.** Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft:

Duty on acceptance.

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

Duty on dishonor.

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its efforts to ascertain the reasons therefor and must request instructions. But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

Section 4-504. **Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses.**

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

Presenting bank may deal with goods.

Bank's lien.

(2) For its reasonable expenses incurred by action



HeinOnline -- 1963 vol. II 978 1963

under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

## ARTICLE 5

## LETTERS OF CREDIT

Title—Uniform Commercial Code—Letters of Credit.

Section 5-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

Section 5-102. **Scope.**

Scope of article.

(1) This Article applies:

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

Exclusions.

(2) Unless the engagement meets the requirements of subsection (1), this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

Application.

(3) This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this Article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article.

Section 5-103. **Definitions.**

Definitions:

(1) In this Article unless the context otherwise requires:

"Credit." "Letter of credit."

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the re-



HeinOnline -- 1963 vol. II 979 1963

quest of a customer and of a kind within the scope of this Article (Section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

"Documentary draft." "Documentary demand for payment." "Document."

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

"Issuer."

(c) An "issuer" is a bank or other person issuing a credit.

"Beneficiary."

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

"Advising bank."

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

"Confirming bank."

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

"Customer."

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

Index to definitions.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Notation of Credit". Section 5-108.
"Presenter". Section 5-112(3).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". Section 3-410.
"Contract for sale". Section 2-106.
"Draft". Section 3-104.
"Holder in due course". Section 3-302.
"Midnight deadline". Section 4-104.
"Security". Section 8-102.



HeinOnline -- 1963 vol. II 980 1963

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 5-104. **Formal Requirements; Signing.**

Formal requirements—credit, confirmation, modification.

(1) Except as otherwise required in subsection (1)(c) of Section 5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

Telegram.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

No consideration necessary.

Section 5-105. **Consideration.** No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

Section 5-106. **Time and Effect of Establishment of Credit.**

Credit established—time.

(1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

Consent to modification, revocation—customer, beneficiary.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

Modification—revocation—by issuer.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.



HeinOnline -- 1963 vol. II 981 1963

Right to Reimbursement.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

Section 5-107. **Advice of Credit; Confirmation; Error in Statement of Terms.**

Obligations—advising bank.

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

Confirming bank.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

Error—original terms.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

Risk of customer.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

Section 5-108. **"Notation Credit"; Exhaustion of Credit.**

"Notation of credit" defined.

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation of credit".

Effect.

(2) Under a notation credit:

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a



HeinOnline -- 1963 vol. II 982 1963

person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit: Effect if not a notation credit—order of honoring.

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. Priority of rights.

Section 5-109. **Issuer's Obligation to Its Customer.**

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liablility or responsibility: Obligations of issuer to customer.

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, Examination by issuer



HeinOnline -- 1963 vol. II 983 1963

falsification or effect of any document which appears on such examination to be regular on its face.

Non-bank issuer.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

Section 5-110. **Availability of Credit in Portions; Presenter's Reservation of Lien or Claim.**

Use in portions.

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

Relinquishment of claims.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

Section 5-111. **Warranties on Transfer and Presentment.**

Warranty of beneficiary.

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

Warranty of bank.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8.

Section 5-112. **Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter".**

Time for honor or rejection.

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) defer honor until the close of the third banking day following receipt of the documents; and



HeinOnline -- 1963 vol. II 984 1963

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit. Dishonor.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect. Return.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. "Presenter" defined.

Section 5-113. **Indemnities.**

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an idemnity to induce such honor, negotiation or reimbursement. Bank may give indemnity— effect— expiration.

(2) An idemnity agreement inducing honor, negotiation or reimbursement:

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitely agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

Section 5-114. **Issuer's Duty and Privilege to Honor; Right to Reimbursement.**

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or de- Duty of issuer to honor draft or demand for payment.



HeinOnline -- 1963 vol. II 985 1963

mand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

Rights of issuer to honor.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7-507) or of a security (Section 8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (Section 7-502) or a bona fide purchaser of a security (Section 8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

Right to reimbursement.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

Section 5-115. **Remedy for Improper Dishonor or Anticipatory Repudiation.**

Remedy for wrongful dishonor.

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2-707) and may recover from the issuer the face amount



HeinOnline -- 1963 vol. II 986 1963

of the draft or demand together with incidental damages under Section 2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

Remedy for anticipatory repudiation.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

Section 5-116. **Transfer and Assignment.**

Transfer and assignment.

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

Beneficiary may assign right to proceeds.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Article 9 on Secured Transactions and is governed by that Article except that:

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.



HeinOnline -- 1963 vol. II 987 1963

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

Section 5-117. **Insolvency of Bank Holding Funds for Documentary Credit.**

Insolvency of bank before final payment—allocation.

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this Article is made applicable by paragraphs (a) or (b) of Section 5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

Right to documents.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.



HeinOnline -- 1963 vol. II 988 1963

## ARTICLE 6

## BULK TRANSFERS

Section 6-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

Title—Uniform Commercial Code—Bulk Transfers.

Section 6-102. **"Bulk Transfer"; Transfers of Equipment; Enterprises Subject to This Article; Bulk Transfers Subject to This Article.**

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9-109) of an enterprise subject to this Article.

"Bulk transfer" defined.

(2) A transfer of a substantial part of the equipment (Section 9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

Transfer of equipment.

(3) The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

Scope.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article.

Subject transfers.

Section 6-103. **Transfers Excepted From This Article.** The following transfers are not subject to this Article:

Excluded transfers.

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of



HeinOnline -- 1963 vol. II 989 1963

a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Notice—publication.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

Section 6-104. **Schedule of Property, List of Creditors.**

Requirements against creditor of transferor.

(1) Except as provided with respect to auction sales (Section 6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

List of creditors.

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

Schedule of property.

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

Inspection—filing.

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the county clerk and recorder of the county of residence of the transferor, and also in the office of the county clerk and recorder of the



HeinOnline -- 1963 vol. II 990 1963

county in which the property transferred is located at the time of transfer.

Form of list.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

Transferor's responsibility.

(3 Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

Notice of transfer against creditors.

Section 6-105. **Notice to Creditors.** In addition to the requirements of the preceeding section, any bulk transfer subject to this Article except one made by auction sale (Section 6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6-107).

Section 6-106. **Application of the Proceeds.** In addition to the requirements of the two preceding sections:

Duty of transferee— payment of debts from proceeds.

(1) Upon every bulk transfer subject to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (Section 6-104) or filed in writing in the place stated in the notice (Section 6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.



HeinOnline -- 1963 vol. II 991 1963

Disputed debts.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

Pro rata distribution.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

Deposit in court.

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the District Court in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

Section 6-107. **The Notice.**

Requirements—notice to creditors.

(1) The notice to creditors (Section 6-105 shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (Section 6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;



HeinOnline -- 1963 vol. II 992 1963

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

Service of notice.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (Section 6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

Section 6-108. **Auction Sales; "Auctioneer".**

Bulk transfer by auction sale.

(1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

List of creditors—schedule of property.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6-104).

"Auctioneer" defined—duties.

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (Section 6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this Article (Section 6-106).

Liability of auctioneer.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds



HeinOnline -- 1963 vol. II 993 1963

of the auction. If the auctioneer consists of several persons their liability is joint and several.

Section 6-109. **What Creditors Protected; Credit for Payment to Particular Creditors.**

Creditors defined.

(1) The creditors of the transferor mentioned in this Article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6-105 and 6-107) are not entitled to notice.

Right to credit for sums paid.

(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (Section 6-106 and subsection (3)(c) of 6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

Subsequent transfers.

Section 6-110. **Subsequent Transfers.** When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

Notice of noncompliance.

(1) a purchaser of any such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

Purchaser without notice.

(2) a purchaser for value in good faith and without such notice takes free of such defect.

Limitations of actions and levies.

Section 6-111. **Limitation of Actions and Levies.** No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

## ARTICLE 7

## WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

### Part 1

### General

Title—Uniform Commercial Code—Documents of Title.

Section 7-101. **Short Title.** This Article shall be



HeinOnline -- 1963 vol. II 994 1963

known and may be cited as Uniform Commercial Code—Documents of Title.

Section 7-102. **Definitions and Index of Definitions.** Definitions:

(1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them. "Bailee."

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery. "Consignee."

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment. "Consignor."

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading. "Delivery order."

(e) "Document" means document of title as defined in the general definitions in Article 1 (Section 1-201). "Document."

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation. "Goods."

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions. "Issuer."

(h) "Warehouseman" is a person engaged in the business of storing goods for hire. "Warehouseman."

(2) Other definitions applying to this Article or to Index to definitions.



HeinOnline -- 1963 vol. II 995 1963

specified Parts thereof, and sections in which they appear are:

"Duly negotiate". Section 7-501.
"Person entitled under the document". Section 7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". Section 2-106.
"Overseas". Section 2-323.
"Receipt" of goods. Section 2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Subject to applicable law.

Section 7-103. **Relation of Article to Treaty, Statute, Tariff, Classification or Regulation.** To the extent that any treaty or statute of the United States, regulatory statute of this State or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto.

Section 7-104. **Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title.**

Negotiable document defined.

(1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

Non-negotiable documents.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

Construction.

Section 7-105. **Construction Against Negative Implication.** The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.



HeinOnline -- 1963 vol. II 996 1963

## Part 2

## Warehouse Receipts: Special Provisions

Section 7-201. **Who May Issue a Warehouse Receipt; Storage Under Government Bond.**

Issue—warehouse receipt.

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

Section 7-202. **Form of Warehouse Receipt; Essential Terms; Optional Terms.**

Form.

(1) A warehouse receipt need not be in any particular form.

Required terms—liability for damages.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in



HeinOnline -- 1963 vol. II 997 1963

common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

Other terms.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Act and do not impair his obligation of delivery (Section 7-403) or his duty of care (Section 7-204). Any contrary provisions shall be ineffective.

Liability for non-receipt or misdescription.

Section 7-203. **Liability for Non-Receipt or Misdescription.** A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantiny or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

Section 7-204. **Duty of Care; Contractual Limitation of Warehouseman's Liability.**

Warehouseman's duty of care.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

Damages may be limited by written terms.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount



HeinOnline -- 1963 vol. II 998 1963

of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

Other reasonable provisions.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

Title acquired by buyer.

Section 7-205. **Title Under Warehouse Receipt Defeated in Certain Cases.** A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Section 7-206. **Termination of Storage at Warehouseman's Option.**

Warehouseman's option—termination of storage—notice.

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (Section 7-210).

Sale as on lien.

Deteriorating goods—notice—public sale.

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification



HeinOnline -- 1963 vol. II 999 1963

any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at a public sale held not less than one week after a single advertisement or posting.

Hazard—sale without notice—disposal.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

Delivery on demand.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

Disposition—proceeds of sale.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

Section 7-207. **Goods Must Be Kept Separate; Fungible Goods.**

Duty to keep goods separate.

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled

Fungible goods—commingling—liability.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

Altered warehouse receipt.

Section 7-208. **Altered Warehouse Receipts.** Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and



HeinOnline -- 1963 vol. II 1000 1963

without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

Section 7-209. **Lien of Warehouseman.**

Warehouseman's lien.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

Security interest.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

Scope of lien.

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under Section 7-503.

Loss of lien.

(4) A warehouseman loses his lien on any goods



HeinOnline -- 1963 vol. II 1001 1963

which he voluntarily delivers or which he unjustifiably refuses to deliver.

Section 7-210. **Enforcement of Warehouseman's Lien.**

Enforcement—notice—sale.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceeding sentence.

Enforcement—other goods—notice—sale.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.



HeinOnline -- 1963 vol. II 1002 1963

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

Person claiming interest may pay lien.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

Warehouseman may purchase.

(4) The warehouseman may buy at any public sale pursuant to this section.

Title of purchaser.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

Application of proceeds.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

Additional rights.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

Enforcement—lien on goods stored by merchant.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).



HeinOnline -- 1963 vol. II 1003 1963

Scope of liability.

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

## Part 3

## Bills of Lading: Special Provisions

### Section 7-301. Liability for Non-Receipt or Misdescription; "Said to Contain"; "Shipper's Load and Count"; Improper Handling.

Remedies—consignee of non-negotiable bill of lading.

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

Duties of common carrier.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

Bulk freight.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

Liability of issuer.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of



HeinOnline -- 1963 vol. II 1004 1963

like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

Shipper's indemnity.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Section 7-302. **Through Bills of Lading and Similar Documents.**

Liability of issuer of through bill of lading.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

Obligation of person in possession of goods.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

Right of action in issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required



HeinOnline -- 1963 vol. II 1005 1963

to pay anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

Section 7-303. **Diversion; Reconsignment; Change of Instructions.**

Carrier's right to deliver goods.

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possesion of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

Effect of instructions on negotiable bill.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

Section 7-304. **Bills of Lading in a Set.**

Separate issue.

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

Lawful issue in parts constitutes one bill.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

Title of holder of part of set.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the docu-



HeinOnline -- 1963 vol. II 1006 1963

ment and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

Liability—transferor of single part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

Duty of bailee to deliver.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

Section 7-305. **Destination Bills.**

Destination bills.

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

Substitute bill.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

Effect of unauthorized alteration.

Section 7-306. **Altered Bills of Lading.** An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Section 7-307. **Lien of Carrier.**

Carrier's lien.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

Scope.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the con-



HeinOnline -- 1963 vol. II 1007 1963

signor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

Loss of lien.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

Section 7-308. **Enforcement of Carrier's Lien.**

Enforcement—notice—sale.

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

Person claiming interest may pay lien.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

Carrier may purchase.

(3) The carrier may buy at any public sale pursuant to this section.



HeinOnline -- 1963 vol. II 1008 1963

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

Application of proceeds.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

Additional rights.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

Procedure.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of Section 7-210.

Scope of liability.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

Section 7-309. **Duty of Care; Contractual Limitation of Carrier's Liability.**

Carrier's duty of care.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

Damages may be limited by agreement.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

Other reasonable terms.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based



HeinOnline -- 1963 vol. II 1009 1963

on the shipment may be included in a bill of lading or tariff.

Part 4

**Warehouse Receipts and Bills of Lading General Obligations**

Scope of obligations—irregularities.

Section 7-401. **Irregularities in Issue of Receipt or Bill or Conduct of Issuer.** The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that:

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

Effect of duplicate receipt or bill.

Section 7-402. **Duplicate Receipt or Bill; Overissue.** Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Section 7-403. **Obligation of Warehouseman or Carrier to Deliver; Excuse.**

Obligation to deliver goods.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;



HeinOnline -- 1963 vol. II 1010 1963

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (Section 2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (Section 7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

Satisfaction of lien.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

Surrender of documents.

(3) Unless the person claiming is one against whom the document confers no right under Sec. 7-503 (1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable ot any person to whom the document is duly negotiated.

"Person entitled under document" defined.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

Bailee not liable for good faith delivery.

Section 7-404. **No Liability for Good Faith Delivery Pursuant to Receipt or Bill.** A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.



HeinOnline -- 1963 vol. II 1011 1963

Part 5

## Warehouse Receipts and Bills of Lading; Negotiation and Transfer

Section 7-501. **Form of Negotiation and Requirements of "Due Negotiation".**

Negotiation—effect of delivery of document.

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

Indorsement.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

"Duly negotiated" defined.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

Indorsement—non-negotiable document.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

Naming of person to be notified.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

Section 7-502. **Rights Acquired by Due Negotiation.**

Tilte of holder after negotiation—rights.

(1) Subject to the following section and to the provisions of Section 7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:



HeinOnline -- 1963 vol. II 1012 1963

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

Scope.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

Section 7-503. **Document of Title to Goods Defeated in Certain Cases.**

Defeat of document of title—conditions.

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entursted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (Section 7-403) or with power of disposition under this Act (Sections 2-403 and 9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.



HeinOnline -- 1963 vol. II 1013 1963

Title to goods—unaccepted delivery order.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

Title to goods—bill of lading issued by forwarder.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Section 7-504. **Rights Acquired in the Absence of Due Negotiation; Effect of Diversion; Seller's Stoppage of Delivery.**

Title and rights—transferee.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

Rights of transferee may be defeated.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under Section 2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

Defeat of consignee's title—diversion.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

Stop order by seller.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under Section 2-705, and



HeinOnline -- 1963 vol. II 1014 1963

subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

Bailee's right to indemnity.

Section 7-505. **Indorser Not a Guarantor for Other Parties.** The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Indorser not a guarantor.

Section 7-506. **Delivery Without Indorsement: Right to Compel Indorsement.** The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Right to require indorsement.

Section 7-507. **Warranties on Negotiation or Transfer of Receipt or Bill.** Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

Warranties to transferee or purchaser.

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair it validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Section 7-508. **Warranties of Collecting Bank as to Documents.** A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

Warranties of collecting bank.

Section 7-509. **Receipt or Bill: When Adequate Compliance With Commercial Contract.** The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is gov-

Adequacy of document.



HeinOnline -- 1963 vol. II 1015 1963

erned by the Articles on Sales (Article 2) and on Letters of Credit (Article 5).

## Part 6

## Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

Section 7-601. **Lost and Missing Documents.**

Court procedure—lost, stolen of destroyed documents.

(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

Liability of bailee—delivery without court order.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after delivery.

No lien attaches unless negotiable document be surrendered.

Section 7-602. **Attachment of Goods Covered by a Negotiable Document.** Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.



HeinOnline -- 1963 vol. II 1016 1963

Conflicting claims.

Section 7-603. **Conflicting Claims; Interpleader.** If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

## ARTICLE 8

## INVESTMENT SECURITIES

### Part 1

### Short Title and General Matters

Title—Uniform Commercial Code—Investment Securities.

Section 8-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities.

Definitions:

Section 8-102. **Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

"Security."

(a) A "security" is an instrument which:

(i) is issued in bearer or registered form; and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Application of law.

(b) A writing which is a security is governed by this Article and not by Uniform Commercial Code —Commercial Paper even though it also meets the requirements of that Article. This Article does not apply to money.



HeinOnline -- 1963 vol. II 1017 1963

"Registered form." (c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

"Bearer form." (d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

"Subsequent purchaser." (2) A "subsequent purchaser" is a person who takes other than by original issue.

"Clearing corporation." (3) A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

"Custodian bank." (4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

Index to definitions. (5) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim". Section 8-301.
"Bona fide purchaser". Section 8-302.
"Broker". Section 8-303.
"Guarantee of the signature". Section 8-402.
"Intermediary Bank". Section 4-105.
"Issuer". Section 8-201.
"Overissue". Section 8-104.

(6) In addition Article 1 contains general definitions and principles of construction and niterpretation applicable throughout this Article.

Issuer's lien—notation on security. Section 8-103. **Issuer's Lien.** A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

Section 8-104. **Effect of Overissue; "Overissue."**

Effect of overissue—rights of purchaser. (1) The provisions of this Article which validate a securiyt or compel its issue or reissue do not apply to the



HeinOnline -- 1963 vol. II 1018 1963

extent that validation, issue or reissue would result in overissue; but:

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

"Overissue" defined.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

Section 8-105. **Securities Negotiable; Presumptions.**

Securities negotiable.

(1) Securities governed by this Article are negotiable instruments.

Action on security—admissions.

(2) In any action on a security:

(a) unless specifically denied in the pleading, each signature on the security or in a necessary indorsement is admitted;

Burden of establishing signature.

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

Recovery.

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

Defense.

Burden of refuting defense.

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8-202).

Application of law.

Section 8-106. **Applicability.** The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (includ-



HeinOnline -- 1963 vol. II 1019 1963

ing the conflict of laws rules) of the jurisdiction of organization of the issuer.

Section 8-107. **Securities Deliverable; Action for Price.**

Right to deliver securities.

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

Seller's remedies.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price:

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly murdensome or if there is no readily available market for their resale.

Part 2

**Issue - Issuer**

Section 8-201. "**Issuer.**"

"Issuer" defined.

(1) With respect to obligations on or defenses to a security "issuer" includes a person who:

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

Guarantor as issuer.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.



HeinOnline -- 1963 vol. II 1020 1963

(3) With respect to registration of transfer (Part 4 of this Article) "issuer" means a person on whose behalf transfer books are maintained. Issuer's transfer books.

Section 8-202. **Issuer's Responsibility and Defenses; Notice of Defect or Defense.**

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice. Terms of security—reference—notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect. Validity—purchaser for value without notice.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security. Government issuer—compliance.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (Section 8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice. Lack of genuineness—complete defense.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense. Other defenses.



HeinOnline -- 1963 vol. II 1021 1963

Construction—right to cancel.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

Section 8-203. **Staleness as Notice of Defects or Defenses.**

Purchaser charged with notice—staleness.

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

Restriction on transfer—notation on security.

Section 8-204. **Effect of Issuer's Restrictions on Transfer.** Uuless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

Effect of unauthorized signature.

Section 8-205. **Effect of Unauthorized Signature on Issue.** An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with



HeinOnline -- 1963 vol. II 1022 1963

the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

Section 8-206. **Completion or Alteration of Instrument.**

Completion of blanks.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

Altered security.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

Section 8-207. **Rights of Issuer With Respect to Registered Owners.**

Effect of registration.

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

Liability of registered owner.

(2) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assesments or the like.

Section 8-208. **Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.**

Warranties of authenticating signer.

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

(a) the security is genuine and in proper form; and

(b) his own participation in the issue of the security is within his capacity and within the scope of



HeinOnline -- 1963 vol. II 1023 1963

the authorization received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

Validity.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

## Part 3

## Purchase

Section 8-301. **Rights Acquired by Purchaser; "Adverse Claim"; Title Acquired by Bona Fide Purchaser.**

Rights acquired by purchase.

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser.

"Adverse claim."

"Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

Bona fide purchaser's rights.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

Limited interest.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

"Bona fide purchaser" defined.

Section 8-302. "**Bona Fide Purchaser.**" A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

"Broker" defined.

Section 8-303. "**Broker.**" "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.



HeinOnline -- 1963 vol. II 1024 1963

Section 8-304. **Notice to Purchaser of Adverse Claims.**

Purchaser charged with notice of adverse claims—conditions.

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if:

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

Duty of inquiry.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or for some other purpose not involving transfer; or inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Purchaser charged with notice—staleness.

Section 8-305. **Staleness as Notice of Adverse Claims.** An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase:

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

Section 8-306. **Warranties on Presentment and Transfer.**

Warranties—person presenting.

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the



HeinOnline -- 1963 vol. II 1025 1963

Purchaser for value without notice.

issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (Section 8-311) in a necessary indorsement.

Transferor.

(2) A person by transferring a security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

Intermediary.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

Pledgee or holder for security.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

Broker.

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

Agent.

Right of purchaser to indorsement.

Section 8-307. **Effect of Delivery Without Indorsement; Right to Compel Indorsement.** Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.



HeinOnline -- 1963 vol. II 1026 1963

Section 8-308. **Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.**

Form of indorsement.

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

Blank or special.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

Holder may convert to special indorsement.

"Appropriate person" defined.

(3) "An appropriate person" in subsection (1) means:

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity, — either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specified more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authroized agent.



HeinOnline -- 1963 vol. II 1027 1963

Obligation of indorser.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

Effect of indorsement of part.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

Determination of appropriate person.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

Non-compliance of fiduciary—effect of indorsement.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this Article.

Transfer on delivery after indorsement.

Section 8-309. **Effect of Indorsement Without Delivery.** An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

Notice of adverse claims by indorsement.

Section 8-310. **Indorsement of Security in Bearer Form.** An indorsement of a security in bearer form may give notice of adverse claims (Section 8-304) but does not otherwise affect any right to registration the holder may possess.

Rights of owner—unauthorized indorsement.

Section 8-311. **Effect of Unauthorized Indorsement.** Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness:

Ineffectiveness.

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

Liability of issuer—improper registration.

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to



HeinOnline -- 1963 vol. II 1028 1963

liability for improper registration (Section 8-404).

Section 8-312. **Effect of Guaranteeing Signature or Indorsement.**

Warranties—guarantor of signature.

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing:

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (Section 8-308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

Guarantor of indorsement.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

Liability of guarantor.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

Section 8-313. **When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder.**

Delivery to purchaser.

(1) Delivery to a purchaser occurs when:

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or



HeinOnline -- 1963 vol. II 1029 1963

(e) appropriate entries on the books of a clearing corporation are made under Section 8-320.

Purchaser as owner.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

Notice of adverse claim after delivery.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

Section 8-314. **Duty to Deliver, When Completed.**

Completion of duty to deliver.

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

Transferor's duty to deliver security in negotiable form.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange



HeinOnline -- 1963 vol. II 1030 1963

a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

Section 8-315. **Action Against Purchaser Based Upon Wrongful Transfer.**

Remedies for wrongful transfer.

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (Section 8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

Transferor's proof of authority—demand.

Section 8-316. **Purchaser's Right to Requisites for Registration of Transfer on Books.** Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand within a reasonable time gives the purchaser the right to reject or rescind the transfer.

Section 8-317. **Attachment or Levy Upon Security.**

Attachment or levy.

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

Creditor's right to court aid.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate



HeinOnline -- 1963 vol. II 1031 1963

jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Liability of agent or bailee.

Section 8-318. **No Conversion by Good Faith Delivery.** An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them.

Statute of frauds.

Section 8-319. **Statute of Frauds.** A contract for the sale of securities is not enforceable by way of action or defense unless:

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

Section 8-320. **Transfer or Pledge within a Central Depository System.**



HeinOnline -- 1963 vol. II 1032 1963

Transfer or pledge—book entry.

(1) If a security:

(a) is in custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

Form of entries.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Effect of book entry.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (Section 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (Sections 9-304 and 9-305). A transferee or pledgee under this section is a holder.

Registration.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this Article.

Obligations.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.



HeinOnline -- 1963 vol. II 1033 1963

Part 4

**Registration**

Section 8-401. **Duty of Issuer to Register Transfer.**

Duty of issuer to register transfer.

(1) Where a security in registered form is presented to the issuer with a request ot register transfer, the issuer is under a duty to register the transfer as requested if:

(a) the security is indorsed by the appropriate person or persons (Section 8-308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (Section 8-402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (Section 8-403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

Liability of issuer.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

Section 8-402. **Assurance That Indorsements Are Effective.**

Issuer may require assurances.

(1) The issuer may require the following assurance that each necessary indorsement (Section 8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (subsection (1) of Section 8-312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;



HeinOnline -- 1963 vol. II 1034 1963

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

"Guarantee of the signature" defined.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

"Appropriate evidence of appointment or incumbency" defined.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

Issuer may require additional reasonable assurances.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection 3(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.



HeinOnline -- 1963 vol. II 1035 1963

Section 8-403. **Limited Duty of Inquiry.**

Duty of issuer to inquire into adverse claims.

(1). An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of Section 8-402.

Discharge of duty— reasonable means.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an idemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

Limitations— issuer's duty to inquire.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of Section 8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is endorsed by the appropriate person



HeinOnline -- 1963 vol. II 1036 1963

or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

Section 8-404. **Liability and Non-Liability for Registration.**

Liability of issuer.

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

(a) there were on or with the security the necessary indorsements (Section 8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (Section 8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:



HeinOnline -- 1963 vol. II 1037 1963

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by Section 8-104.

Section 8-405. **Lost, Destroyed and Stolen Securities.**

Lost, destroyed, stolen securities—notice to issuer.

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

Substitution.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

Presentation of original by bona fide purchaser.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by Section 8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

Section 8-406. **Duty of Authenticating Trustee, Transfer Agent or Registrar.**



HeinOnline -- 1963 vol. II 1038 1963

Duty of authenticating agent for issuer.

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

Effect of notice.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

## ARTICLE 9

## SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

### Part 1

### Short Title, Applicability and Definitions

Title—Uniform Commercial Code—Secured Transactions.

Section 9-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

Section 9-102. **Policy and Scope of Article.**

Application of law—personal property and fixtures.

(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this State:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.



HeinOnline -- 1963 vol. II 1039 1963

Security interests created by contract.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

Effect.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

Section 9-103. **Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest.**

Scope of law.

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity



HeinOnline -- 1963 vol. II 1040 1963

of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

Section 9-104. **Transactions Excluded From Article.** This Article does not apply: Exclusions. from law.

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for



HeinOnline -- 1963 vol. II 1041 1963

services or materials except as provided in Section 9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; and

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in Section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

Section 9-105. **Definitions and Index of Definitions.**

Definitions:

(1) In this Article unless the context otherwise requires:

"Account debtor."

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

"Chattel paper."

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a



HeinOnline -- 1963 vol. II 1042 1963

series of instruments, the group of writings taken together constitutes chattel paper;

"Collateral."

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

"Debtor."

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

"Document."

(e) "Document" means document of title as defined in the general definitions of Article 1 (Section 1-201);

"Goods."

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

"Instrument."

(g) "Instrument" means a negotiable instrument (defined in Section 3-104), or a security (defined in Section 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

"Security agreement."

(h) "Security agreement" means an agreement which creates or provides for a security interest;

"Secured party."

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of



HeinOnline -- 1963 vol. II 1043 1963

trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

Index to definitions.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". Section 9-106.
"Consumer goods". Section 9-109(1).
"Contract right". Section 9-106.
"Equipment". Section 9-109(2).
"Farm products". Section 9-109(3).
"General intangibles". Section 9-106.
"Inventory". Section 9-109(4).
"Lien creditor". Section 9-301(3).
"Proceeds". Section 9-306(1).
"Purchase money security interest". Section 9-107.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3-104.
"Contract for sale". Section 2-106.
"Holder in due course". Section 3-302.
"Note". Section 3-104.
"Sale". Section 2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

"Account."

Section 9-106. **Definitions: "Account"; "Contract Right"; "General Intangibles".** "Account means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

"Contract right."

"Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper.

"General intangibles."

"General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

"Purchase money security interest."

Section 9-107. Definitions: **"Purchase Money Security Interest".** A security interest is a "purchase money security interest" to the extent that it is:

(a) taken or retained by the seller of the collateral to secure all or part of its price; or



HeinOnline -- 1963 vol. II 1044 1963

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Section 9-108. **When After-Acquired Collateral Not Security for Antecedent Debt.** Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

After acquired collateral not security for antecedent debt

Section 9-109. **Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory".** Goods are:

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes; "Consumer goods."

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods; "Equipment."

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory; "Farm products."

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. "Inventory."



HeinOnline -- 1963 vol. II 1045 1963

Sufficiency of description.

Section 9-110. **Sufficiency of Description.** For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

Application of law.

Section 9-111. **Applicability of Bulk Transfer Laws.** The creation of a security interest is not a bulk transfer under Article 6.

Rights of collateral owner who is not debtor.

Section 9-112. **Where Collateral Is Not Owned by Debtor.** Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 9-502(2) or under Section 9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(a) to receive statements under Section 9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9-505;

(c) to redeem the collateral under Section 9-506;

(d) to obtain injunctive or other relief under Section 9-507(1); and

(e) to recover losses caused to him under Section 9-208(2).

Application of law—security interests under sales.

Section 9-113. **Security Interests Arising Under Article on Sales.** A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2).



HeinOnline -- 1963 vol. II 1046 1963

## Part 2

## Validity of Security Agreement and Rights of Parties Thereto

General validity of security agreement.

Section 9-201. **General Validity of Security Agreement.** Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Title to collateral immaterial.

Section 9-202. **Title to Collateral Immaterial.** Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Section 9-203. **Enforceability of Security Interest; Proceeds, Formal Requisites.**

Enforceability.

(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless:

Possession of collateral.

(a) the collateral is in the possession of the secured party; or

Debtor's signature—description.

"Proceeds" sufficient.

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

Application—other statutes.

(2) A transaction although subject to this Article, is also subject to Chapter 2 of Title 47 of the Revised Codes of Montana, 1947, as enacted by Chapter 283, Laws of Montana 1959, to Chapter 6 of Title 74 of the Revised Codes of Montana, 1947, as enacted by Chapter 282, Laws of Montana 1959, and to Sections 52-319 to 52-323, in-



HeinOnline -- 1963 vol. II 1047 1963

clusive, Chapter 1 of Title 53, and Chapter 16 of Title 66, of the Revised Codes of Montana, 1947, as amended, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Section 9-204. **When Security Interest Attaches; After-Acquired Property; Future Advances.**

Security interest agreement—value—debtor's rights in collateral.

(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights:

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

After acquired collateral.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

Exceptions.

(4) No security interest attaches under an after-acquired property clause:

Crops.

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed or trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

Consumer goods.

(b) to consumer goods other than accessions (Section 9-314) when given as additional security un-



HeinOnline -- 1963 vol. II 1048 1963

less the debtor acquires rights in them within ten days after the secured party gives value.

Future advances—other value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

Debtor's use of collateral permissible.

Section 9-205. **Use or Disposition of Collateral Without Accounting Permissible.** A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

Section 9-206. **Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.**

Enforceability—agreement not to assert defenses against assignee.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

Application—purchase money security interest.

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Section 9-207. **Rights and Duties When Collateral Is in Secured Party's Possession.**



HeinOnline -- 1963 vol. II 1049 1963

Duty of secured party holding collateral.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

Rights of secured party holding collateral.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

Liability.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

Secured party's right to use collateral

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Section 9-208. **Request for Statement of Account or List of Collateral.**

Debtor's right to approval—statement of indebtedness—list of collateral.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the se-



HeinOnline -- 1963 vol. II 1050 1963

cured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

Duty to comply.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

Liability.

Disclosure of successor.

Statement every six months.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

## Part 3

## Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

Section 9-301. **Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor".**

Priority over unperfected security interests.

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under Section 9-312;



HeinOnline -- 1963 vol. II 1051 1963

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

Filing—priority of secured party.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

"Lien creditor" defined.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

Section 9-302. **When Filing is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.**

Financing statement.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under Section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under



HeinOnline -- 1963 vol. II 1052 1963

Section 9-304 or in proceeds for a 10 day period under Section 9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2500; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (Section 4-208) or arising under the Article on Sales or covered in subsection (3) of this section.

Assignment.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Application—other statutes.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute:

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Security interests perfected under other statutes.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

Section 9-303. **When Security Interest Is Perfected; Continuity of Perfection.**



HeinOnline -- 1963 vol. II 1053 1963

Perfection—conditions.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

Perfection deemed continuous.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article.

Section 9-304. **Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.**

Perfection by filing—possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

Security interest in document—possession in issuer.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

Perfection—possession in bailee.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of th secured party's interest or by filing as to the goods.

Perfection without filing or possession—21 days.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

Conditions—21-day period.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having



HeinOnline -- 1963 vol. II 1054 1963

a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

Perfection after 21-day period.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

Perfection by possession of collateral.

Section 9-305. **When Possession by Secured Party Perfects Security Interest Without Filing.** A security interest in letters of credit and advices of credit (subsection (2)(a) of Section 5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receivs notification of the secured party's interest. A security interest is perfected by possssion from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

Section 9-306. **"Proceeds"; Secured Party's Rights on Disposition of Collateral.**

"Proceeds."

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

"Cash proceeds."



HeinOnline -- 1963 vol. II 1055 1963

Continuation—security interest in collateral proceeds.

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

Security interest in proceeds—10-day period.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

Insolvency proceedings—perfected security interest.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest:

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the



HeinOnline -- 1963 vol. II 1056 1963

debtor and paid over to the secured party during the ten day period.

Priority rules—repossession by seller or secured party.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Section 9-307. **Protection of Buyers of Goods.**

Title—buyer in ordinary course of business except farm products.

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.



HeinOnline -- 1963 vol. II 1057 1963

Consumer goods and farm equipment.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2500 (other than fixtures, see Section 9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

Priorities—purchase of chattel paper and non-negotiable instruments.

Section 9-308. **Purchase of Chattel Paper and Non-Negotiable Instruments.** A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under Section 9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (Section 9-306), even though he knows that the specific paper is subject to the security interest.

Rights of purchasers not limited.

Section 9-309. **Protection of Purchasers of Instruments and Documents.** Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (Section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7-501) or a bona fide purchaser of a security (Section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

Priority of materialman's lien.

Section 9-310. **Priority of Certain Liens Arising by Operation of Law.** When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.



HeinOnline -- 1963 vol. II 1058 1963

Transfer of debtor's rights in collateral.

Section 9-311. **Alienability of Debtor's Rights: Judicial Process.** The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

Section 9-312. **Priorities Among Conflicting Security Interests in the Same Collateral.**

Priorities—conflicting security interests in same collateral.

(1) The rules of priority stated in the following sections shall govern where applicable: Section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9-301 on certain priorities; Section 9-304 on goods covered by documents; Section 9-306 on proceeds and repossessions; Section 9-307 on buyers of goods; Section 9-308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; Section 9-309 on security interests in negotiable instruments, documents or securities; Section 9-310 on priorities between perfected security interests and liens by operation of law; Section 9-313 on security interests in fixtures as against interests in real estate; Section 9-314 on security interests in accessions as against interest in goods; Section 9-315 on conflicting security interests where goods lose their identity or become part of a product; and Section 9-316 on contractual subordination.

Crops.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

Purchase money—inventory collateral.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:

(a) the purchase money security interest is perfected



HeinOnline -- 1963 vol. II 1059 1963

at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

Purchase money—other collateral.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

Determination of priority—other cases.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under Section 9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected



HeinOnline -- 1963 vol. II 1060 1963

security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

Section 9-313. **Priority of Security Interests in Fixtures.**

Application—fixtures as part of structure.

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this Article unless the structure remains personal property under applicable law. The law of this state other than this Act determines whether and when other goods become fixtures. This Act does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

Goods before becoming fixtures.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

Goods after becoming fixtures.

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

Limitations.

(4) The security interests described in subsections (2) and (3) do not take priority over:

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance un-



HeinOnline -- 1963 vol. II 1061 1963

der the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

Rights of secured party—obligations.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Accessions.

Section 9-314. **Accessions.**

Goods before installation.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to Section 9-315(1).

Goods after installation.

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

Limitations.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or



HeinOnline -- 1963 vol. II 1062 1963

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

Subsequent purchaser defined.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Rights of secured party—obligations.

Section 9-315. **Priority When Goods Are Commingled or Processed.**

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

Priority after goods are commingled.

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-314.



HeinOnline -- 1963 vol. II 1063 1963

Equal interests—ratio.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Subordination by agreement.

Section 9-316. **Priority Subject to Subordination.** Nothing in this Article prevents subordination by agreement by any person entitled to priority.

Nonliability of secured party.

Section 9-317. **Secured Party Not Obligated on Contract of Debtor.** The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

Section 9-318. **Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.**

Limitations on rights of assignee.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

Modification or substitution.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.



HeinOnline -- 1963 vol. II 1064 1963

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor. Authority to pay.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective. Effect of prohibiting assignment.

## Part 4

## Filing

Section 9-401. **Place of Filing; Erroneous Filing; Removal of Collateral.**

(1) The proper place to file in order to perfect a security interest is as follows: Place of filing to perfect security interest.

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the Secretary of State.



HeinOnline -- 1963 vol. II 1065 1963

Effect of improper filing.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

Effect of debtor's change of address.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

Collateral brought into Montana.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in Section 9-103 determine whether filing is necessary in this state.

Section 9-402. **Formal Requisites of Financing Statement; Amendments.**

Formal requisites—financing statement—sufficiency.

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

Signatures.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.



HeinOnline -- 1963 vol. II 1066 1963

(b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1): Form.

Name of debtor (or assignor) .....

Address .....

Name of secured party (or assignee) .....

Address .....

1. This financing statement covers the following types (or items) of property:
   (Describe) .....
2. (If collateral is crops) The above described crops are growing or are to be grown on:
   (Describe Real Estate) .....
3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:
   (Describe Real Estate) .....
4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor) .....

Signature of Secured Party (or Assignee) .....

(4) The term "financing statement" as used in this Article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. "Financing statement" defined

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. Effect of errors.

Section 9-403. **What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.**

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the state- Presentation and tender of fee constitutes filing.



HeinOnline -- 1963 vol. II 1067 1963

ment by the filing officer constitutes filing under this Article.

Effect of maturity date—lapse.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demend is effective for five years from the date of filing.

Continuation statement—requirements.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

Duties of filing officer.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.



HeinOnline -- 1963 vol. II 1068 1963

(5) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing date for an original or a continuation statement shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such original or continuation statement. Fees.

Section 9-404. **Termination Statement.**

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such assignment or statement. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure. Duty of secured party—termination statement. Fees. Liability.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. Duties of filing officer.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and index- Fees.



HeinOnline -- 1963 vol. II 1069 1963

ing a termination statement including sending or delivering the financing statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such termination statement.

Section 9-405. **Assignment of Security Interest; Duties of Filing Officer; Fees.**

Financing statement may disclose assignment.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9-403(4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing date for a financing statement so indicating an assignment shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

Assignment of record.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate state-

Duties of filing officer.



HeinOnline -- 1963 vol. II 1070 1963

ment with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

Fees. Assignee—secured party of record.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Section 9-406. **Release of Collateral; Duties of Filing Officer; Fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and noting such a statement of release shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

Signed statement may release all or part of collateral.

Duties of filing officer.

Fees.

Section 9-407. **Information From Filing Officer.**

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

Right to information on copy.



HeinOnline -- 1963 vol. II 1071 1963

Filing officer's certificate.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be one dollar ($1.00) plus thirty cents (30c) for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents (50c) per page.

Fees.

## Part 5

## Default

Section 9-501. **Default; Procedure When Security Agreement Covers Both Real and Personal Property.**

Default—rights of secured party.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9-207. The rights and remedies referred to in this subsection are cumulative.

Debtor's rights after default.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in Section 9-207.

Waiver—agreement on standards.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of Section 9-505) and with respect to redemption of collateral (Section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and



HeinOnline -- 1963 vol. II 1072 1963

duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of Section 9-502 and subsection (2) of Section 9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of Section 9-504 and subsection (1) of Section 9-505 which deal with disposition of collateral;

(c) subsection (2) of Section 9-505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9-506 which deals with redemption of collateral; and

(e) subsection (1) of Section 9-507 which deals with the secured party's liability for failure to comply with this Part.

Procedure—real and personal property.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

Rights after judgment.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

Section 9-502. **Collection Rights of Secured Party.**

Notice to make payment.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9-306.



HeinOnline -- 1963 vol. II 1073 1963

Procedure—right to charge back—recourse.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Right to possession of collateral.

Section 9-503. **Secured Party's Right to Take Possession After Default.** Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the security party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9-504.

Section 9-504. **Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.**

Right to dispose of collateral.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2).

Disposition of proceeds.

The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the



HeinOnline -- 1963 vol. II 1074 1963

security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

Duty to account.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Public or private sale of collateral.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

Notice.

Rights of purchaser.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the



HeinOnline -- 1963 vol. II 1075 1963

security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

Duties of transferee.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article.

Section 9-505. **Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.**

Duty of secured party to dispose of collateral where sixty per cent of loan paid.

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under Section 9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9-507(1) on secured party's liability.

Liability.

Retainer in satisfaction.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or

Notice.

Written objection.



HeinOnline -- 1963 vol. II 1076 1963

other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under Section 9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

Section 9-506. **Debtor's Right to Redeem Collateral.** At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9-504 or before the obligation has been discharged under Section 9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

Debtor's right to redeem.

Section 9-507. **Secured Party's Liability for Failure to Comply With This Part.**

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

Secured party's liability for noncompliance.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured

Commercially reasonable manner defined.



HeinOnline -- 1963 vol. II 1077 1963

party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

## ARTICLE 10

## EFFECTIVE DATE AND REPEALER

Effective January 1, 1965.

Section 10-101. **Effective Date.** This Act shall become effective at midnight on January 1, 1965. It applies to transactions entered into and events occurring after that date.

Section 10-102. **Specific Repealer; Provision for Transition.**

Repealing clause.

(1) The following sections of the Revised Codes of Montana, 1947, as amended, and all other acts and parts of acts inconsistent herewith are hereby repealed: sections 5-1007, 5-1008, 5-1016, 5-1017, 5-1043, 5-1047 through 5-1049, 8-501 through 8-507, 8-816 through 8-818, 14-523, 15-603, 15-605, 15-628 through 15-651, 16-2921, 17-308 through 17-314, 17-601, 17-602, 18-201 through 18-205, 30-601 through 30-609, 45-106, 45-1104, 45-1301 through 45-1305, 52-301 through 52-311, 52-315 through 52-317, 55-101 through 55-1801, 56-107, 65-104, 65-107, 65-115 through 65-126, 65-201 through 65-219, 67-1702 through 67-1704, 72-303, 72-305 through 72-307, 74-201, 74-202, 74-204 through 74-207, 74-321, 74-401 through 74-403, 74-502, 86-705, 86-706, 88-101 through 88-149, 88-156 through 88-160, and 93-4339.

Saving clause.

(2) Transactions validly entered into before the effective date specified in Section 10-101 and the rights,



HeinOnline -- 1963 vol. II 1078 1963

duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

Repealing clause.

Section 10-103. **General Repealer.** Except as provided in the following section, all acts and parts of acts inconsistent with this Act are hereby repealed.

Construction—laws not repealed.

Section 10-104. **Laws Not Repealed.** The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (Section 1-201).

References to a "branch" or "separate office" of a bank in this Act are included to preserve uniformity in a Uniform Act and are not to be construed as affecting or amending in any way the laws of this state relative to the operation of branches or separate offices of a bank.

This Act does not repeal or modify any of the following provisions of the Revised Codes of Montana, 1947: section 66-219, relating to auctioneer's memorandum of sale; section 72-411, relating to claims against carriers for damage to livestock; or sections 83-601 to 83-607, inclusive, relating to contract actions against the state.

## ARTICLE 11

## AMENDMENTS TO EXISTING LAWS

Amending clause.

Section 11-101. Section 3-226 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Possession by warehouseman considered bailment.

"3-226. **Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.** Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like



HeinOnline -- 1963 vol. II 1079 1963

amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms therefor, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee (matter deleted)."

Priority—warehouse receipts.

Amending clause.

Section 11-102. Section 5-803 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Deposits in insolvent bank.

"5-803. **Deposits in insolvent bank. Except as otherwise provided by the Uniform Commercial Code:** Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in (matter deleted) connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, than any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars ($10,000.00), or im-

Duty to keep separate.

Violation—penalties.



HeinOnline -- 1963 vol. II 1080 1963

prisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid."

Amending clause.

Section 11-103. Section 5-1001 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Limitation—banks' authority to accept or issue drafts.

"5-1001. **Acceptance and issuance of drafts and letters of credit.** Every bank organized and existing under the laws of Montana, shall have power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, or its correspondents at sight or on time (matter deleted), provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank."

Amending clause.

Section 11-104. Section 5-1114 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Order of payment—debts of liquidated bank.

"5-1114. **Claims—order of payment—priorities. Except as otherwise provided by the Uniform Commercial Code,** the order of payment of the debts of a bank liquidated by the superintendent of banks shall be as follows:

Expenses.

"(1) The expense of liquidation, including compensation of agents, employees and attorneys.

Other banks' funds.

"(2) All funds of any other bank in process of liquidation by the superintendent of banks and placed on deposit by the superintendent of banks.

Trust funds.

"(3) All funds held by the bank in trust.

Debts due.

"(4) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are



HeinOnline -- 1963 vol. II 1081 1963

included within the terms of this subdivision and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit or other interest bearing contracts, up to the time of the closing the bank to be considered as part of the debt due.

Interest.

"(5) Interest on all the foregoing classes of claims without regard to the priority computed from the date of closing of the bank at the rate of seven per centum (7%) per annum.

Unliquidaetd claims.

"(6) Unliquidated claims for damages and the like, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments; provided, however, that the superintendent may, in his discretion, without regard to the priorities herein fixed in subdivisions (3), (4), (5) and (6) of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above mentioned moneys for the aforesaid purposes.

Security collateral.

"(7) Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired, after which offsets as in this section provided shall be allowed.

Offset.

"(8) Deposits of any person, firm or corporation in a bank which is in the possession of the superintendent, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section), except assessments on stock, due to such bank from such person, firm or corporation. All dividends when declared



HeinOnline -- 1963 vol. II 1082 1963

in favor of any creditor of the bank may be applied, in the discretion of the superintendent, in satisfaction of the indebtedness, if any, due the bank from such creditor."

Amending clause.

Section 11-105. Section 8-709 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Assent to written contract of carriage.

"8-709. **Effect of written contract.** A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, *except as otherwise provided in the Uniform Commercial Code.*"

Amending clause.

Section 11-106. Section 11-2404 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authorization—municipal undertaking bonds.

"11-2404. **Authorization of undertaking — form and contents of bonds.** The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Special election after resolution.

Refunding bonds without election.

Form and contents of bonds.

"Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semi-annually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of



HeinOnline -- 1963 vol. II 1083 1963

redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, (matter deleted) *as provided by the Uniform Commercial Code—Investment Securities.*"

Private sale.

Public sale—notice—publication.

Bonds shall be negotiable.

Amending clause.

Section 11-107. Section 11-3714 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority of commission to enter into indentures for security of bonds.

"11-3714. **Indenture for security of bonds.** The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to *and is bound by* all of the provisions of the indenture, (matter deleted) *to the extent that such provisions do not conflict with provisions stated in the bonds.* An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission

Recourse and obligation of bond holder.

Terms and contents of indenture.



HeinOnline -- 1963 vol. II 1084 1963

as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Payment of principal and interest.

Repair.

Protection of security.

Payment of lawful claims.

Restriction on encumbrance.

"Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the further security of such bonds or as a

Fixing of fees.



HeinOnline -- 1963 vol. II 1085 1963

depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protction of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Revenues held in trust.

Limitation on application of proceeds.

Additional bonds.

Insurance.

Default.

"Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintanied by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Breach of contract.

Amendment—modification.

Meetings.

"Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

Outstanding bonds.

"With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state



HeinOnline -- 1963 vol. II 1086 1963

of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment."

Amending clause.

Section 11-108. Section 11-3721 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority to issue funding or refunding bonds.

"11-3721. **Funding or refunding bonds—negotiability.** Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act (matter deleted) *shall be fully* negotiable, (matter deleted) *as provided by the Uniform Commercial Code—Investment Securities.*"

Bonds shall be negotiable.

Amending clause.

Section 11-109. Subsection (b) of section 11-3910 of the Revised Codes of Montana, 1947, as enacted by chapter 195, Laws of Montana, 1959, is hereby amended to read as follows:

Application of law—debt limitation—tax exemption.

"(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall (matter deleted) be subject *only* to the provisions of (matter deleted) *the Uniform Commercial Code.* Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes."



HeinOnline -- 1963 vol. II 1087 1963

Amending clause.

Section 11-110. Section 13-606 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Statute of frauds—contracts requiring writing.

"13-606. **What contracts must be in writing.** The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

"1. An agreement that by its terms is not to be performed within a year from the making thereof.

"2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105 of this code.

"3. An agreement made upon consideration of marriage other than a mutual promise to marry.
(Matter deleted.)

"*4.* An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

"(Matter deleted.) *5.* An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

Application of law.

*"This section shall not apply to agreements subject to the Uniform Commercial Code."*

Amending clause.

Section 11-111. Section 16-2905 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duties of county clerk to keep indexes.

"16-2905. **Indexes to be kept.** Every county clerk, as ex-officio recorder, must keep:

"Grantors."

"1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled 'Grantors,' each page divided into four columns, headed respectively: 'Names of grantors,' 'Names of grantees,' 'Date of deeds, grants, transfer, or contracts,' and 'Where recorded';

"Grantees."

"2. An index of deeds, labeled 'Grantees,' each page divided into four columns, headed respectively: 'Names of grantees,' 'Names of grantors,' 'Date of deeds, grants, transfers, or contracts,' and 'Where recorded';



HeinOnline -- 1963 vol. II 1088 1963

"3. *An index* (matter deleted) of mortgages, labeled (matter deleted) 'Mortgages of real property,' (matter deleted) with the pages thereof divided into (matter deleted) *six* columns, headed respectively: 'Names of Mortgagor,' 'Names of mortgagees,' 'Dates of Mortgages,' 'Where recorded,' 'When filed,' 'When canceled'; "Mortgages of real property."

"4. *An index* (matter deleted) of mortgages, labeled (matter deleted) 'Mortgages of real property,' (matter deleted) with the pages thereof divided into (matter deleted) *six* columns, headed respectively: 'Names of Mortgagees,' 'Names of mortgagors,' 'Date of mortgage,' 'Where recorded,' 'When filed,' 'When canceled'; "Mortgages of real property."

"5. *An index* (matter deleted) of mortgages, labeled (matter deleted) 'Releases of mortgages of real property—Mortgagees,' (matter deleted) with the pages thereof divided into six columns, headed respectively: 'Parties whose mortgages are released,' 'Parties releasing,' 'Date of release,' 'Where recorded,' (matter deleted) 'Date of mortgages released,' 'Where mortgages released are recorded.' (Matter deleted.) "Releases of mortgages of real property—mortgagees."

"6. An index of powers of attorney, labeled 'Powers of attorney,' each page divided into five columns, headed respectively: 'Names of parties executing powers,' 'To whom powers are executed,' 'Date of powers,' 'Date of recording,' 'To whom powers are executed'; "Powers of attorney."

"7. An index of leases, labeled 'Leases,' each page divided into four columns, headed respectively: 'Names of lessors,' 'Names of lessees,' 'Date of leases,' 'When and where recorded'; "Leases."

"8. An index of leases, labeled 'Lessees,' each page divided into four columns respectively: 'Names of lessees,' 'Names of lessors,' 'Date of leases,' 'When and where recorded'; "Lessees."

"9. An index of marriage certificates, labeled 'Marriage certificate—Men,' each page divided into six columns, headed respectively: 'Men married,' 'To whom married,' 'When married,' 'By whom married,' 'Where married,' 'Where certificates are recorded'; "Marriage certificate—men."

"10. An index of marriage certificates, labeled 'Marriage certificates—Women,' each page divided into six columns, headed respectively: 'Women married,' (and "Marriage certificate—women."



HeinOnline -- 1963 vol. II 1089 1963

under this head placing the family names of the women), 'To whom married,' 'When married,' 'By whom married,' 'Where married,' 'Where certificates are recorded';

"Assignment of mortgages and leases—assignors."

"11. An index of assignments of mortgages and leases, labeled 'Assignments of mortgages and leases—Assignors,' each page divided into five columns, headed respectively: 'Assignors,' 'Assignees,' 'Instruments assigned,' 'Date of assignment,' 'When and where recorded';

"Assignment of mortgages and leases—assignees."

"12. An index of assignments of mortgages and leases, labeled 'Assignments of mortgages and leases—Assignees,' each page divided into five columns, headed respectively: 'Assignees,' 'Assignors,' 'Instruments,' 'Date of assignments,' 'When and where recorded';

"Wills."

"13. An index of wills, labeled 'Wills,' each page divided into four columns, headed respectively: 'Names of testators,' 'Date of wills,' 'Date of probate,' 'When and where recorded';

"Official bonds."

"14. An index of official bonds, labeled 'Official bonds,' each page divided into five columns, headed respectively: 'Names of officers,' 'Names of offices,' 'Date of bonds,' 'Amount of bonds,' 'When and where recorded';

"15. An index of notices of mechanics' liens, labeled 'Mechanics' liens,' each page divided into three columns, headed respectively: 'Parties claiming liens,' 'Against whom claimed,' 'Notices, when filed';

"Transcript of judgments."

"16. An index to transcripts of judgments, labeled 'Transcripts of judgments,' each page divided into seven columns, headed respectively: 'Judgment debtors,' 'Judgment creditors,' 'Amount of judgments,' 'Where recovered,' 'When recovered,' 'When transcript filed,' 'When judgment satisfied';

"Attachments."

"17. An index of attachments, labeled 'Attachments,' each page divided into six columns, headed respectively: 'Parties against whom attachments are issued,' 'Parties issuing attachments,' 'Notice of attachments,' 'When filed,' 'When attachments discharged';

"Notices of actions."

"18. An index of notices of the pendency of actions, labeled 'Notices of action,' each page divided into three



HeinOnline -- 1963 vol. II 1090 1963

columns, headed respectively: 'Parties to action,' 'Notices, when recorded,' 'When filed';

"19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled 'Certificates of sale,' each page divided into four columns, headed respectively: 'Plaintiff,' 'Defendant,' 'Purchaser at sale,' 'Date of sale'; "Certificates of sale."

"20. An index of the separate property of married women and sole trader judgments labeled 'separate property of married women and sole traders,' each page divided into five columns, headed respectively: 'Names of married women,' 'Names of their husbands,' 'Nature of instruments recorded,' 'When recorded,' 'Where recorded'; "Separate property of married women and sole traders."

"21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated and the year when the work was done, labeled 'Annual work on mining claims'; "Annual work on mining claims."

"22. An index of mining claims and declaratory statements, labeled 'Notices of location of mining claims and declaratory statements,' each page divided into four columns, headed respectively: 'Locators,' 'Name of claim,' 'Notice, when filed,' 'Where recorded'; "Notices of location of mining claims and declaratory statements."

"23. An index to the register of births and deaths; Births and deaths.

"24. An index to notices and declarations of water rights; Water rights.

"25. An index to the 'Estray and lost property book'; Estray and lost property.

"26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed. Assignments for creditors.

"27. *An index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions.* Financing statements.

"*28.* A miscellaneous index, in which must be indexed papers not hereinbefore stated." Miscellaneous.

Section 11-112. Section 16-2922 of the Revised Codes of Montana, 1947, is hereby amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. II 1091 1963

Seed and thresher's liens retained for eight years.

"16-2922. **Seed and threshers' liens to be retained eight years from and after extinction of lien.** All (matter deleted) seed liens and threshers' liens, which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorded of the several counties in the state (matter deleted) shall be retained by such county clerk (matter deleted) in a file kept by him for such purposes, for a period of eight years from and after the time when said (matter deleted) seed lien, or threshers' lien has ceased to be a lien on the property described therein (matter deleted)."

Amending clause.

Section 11-113. Section 16-2923 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority to destroy records.

"16-2923. **Destruction of records, when allowed.** Upon the expiration of the period of time specified in section 16-2922, the county clerk and recorder (matter deleted) may destroy all (matter deleted) seed liens and threshers' lien which have been preserved for th period of time specified in this act."

Amending clause.

Section 11-114. Section 19-103 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Definitions.

"19-103. **Certain words defined.** The following words when used in the Revised Codes of Montana of 1947, or in any act amendatory of or supplemental to said codes, shall have the following meanings and interpretations unless otherwise apparent from the context. The present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term 'testify,' and every written one in the term 'deposit'; signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context.

"Property."

"1. The word 'property' includes property real and personal.



HeinOnline -- 1963 vol. II 1092 1963

"2. The words 'real property' are co-extensive with lands, tenements, hereditaments and possessory title to public lands. "Real property."

"3. The words 'personal property' include money, goods, chattels, things in action and evidence of debt. "Personal property."

"4. The word 'year,' means a calendar year, and a 'month,' a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six (6) months. Fractions of a day are to be disregarded in computations which include more than one (1) day and involve no questions of priority. "Year." "Month."

"5. The word 'State,' when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words 'United States' may include the district and territories. "State." "United States."

"6. The word 'will' includes codicils. "Will."

"7. The word 'writ' signifies an order or precept in writing, issued in the name of the state, or of a court or judicial officer; and the word 'process,' a writ or summons issued in the course of judicial proceedings. "Writ." "Process."

"8. The word 'vessel' when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats and every structure adapted to be navigated from place to place. "Vessel."

"9. The term 'peace officer' signifies any of the officers mentioned in section 94-4906. "Peace officer."

"10. The term 'magistrate' signifies any one of the officers mentioned in section 94-4905. "Magistrate."

"11. The word 'several' means two (2) or more. "Several."

"12. The words 'third persons' include all who are not parties to the obligation or transaction concerning which the phrase is used. "Third persons."

"13. Usage, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general and uniform, Usage.



HeinOnline -- 1963 vol. II 1093 1963

that they must be presumed to have acted with reference thereto.

"Usual." "Customary." ''14. The words 'usual' and 'customary' mean 'according to usage.'

"Wilfully." ''15. The word 'wilfully' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

"Neglect," etc. ''16. The words 'neglect,' 'negligence,' 'negligent,' and 'negligently' import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

"Corruptly." ''17. The word 'corruptly' imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

"Malice." "Maliciously." ''18. The words 'malice' and 'maliciously' import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

"Knowingly." ''19. The word 'knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowl edge of the unlawfulness of such act or omission.

"Bribe." ''20. The word 'bribe' signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

"Seal." ''21. When the seal of a court or public officer is required by law to be affixed to any paper the word 'seal' includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word 'seal' against his name.



HeinOnline -- 1963 vol. II 1094 1963

"22. *'Pledge,' 'mortgage,' 'conditional sale,' 'lien,' 'assignment,' and like terms, when used in referring to a security interest in personal property, shall include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.*" Terms referring to security interest.

Section 11-115. Section 25-231 of the Revised Codes of Montana, 1947, is hereby amended to read as follows: Amending clause.

"25-231. **Fees of county clerks.** The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows: Schedule of fees of county clerks.

"For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

"For first folio, sixty cents (60¢) and for each subsequent folio or fraction thereof, thirty cents (30¢);

"For each entry in index, twenty cents (20¢);

"For certificate that such instrument has been recorded with seal affixed, one dollar ($1.00);

"For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

"For each folio, forty cents (40¢);

"For each entry in index, twenty cents (20¢);

"For certificate that such mortgage, assignment or release has been recorded with seal affixed, one dollar ($1.00);

"For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, four dollars ($4.00);

"For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, two dollars ($2.00) for the first mining claim in said affidavit, and fifty cents (50¢) for each additional mining claim described and included therein;



HeinOnline -- 1963 vol. II 1095 1963

"For filing and indexing each (matter deleted) writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar ($1.00);

"For filing and indexing each certificate of incorporation or annual statement of any corporation, two dollars ($2.00);

"For recording and platting each town site or map;

"For each lot up to and including one hundred, fifty cents (50¢);

"For each additional lot in excess of one hundred, ten cents (10¢);

"For recording the field notes of survey of any town site, per folio, fifty cents (50¢).

"Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be two dollars ($2.00) for each page or fraction thereof of said instrument.

"For a copy of any record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar ($1.00); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of one dollar ($1.00) for his certificate and seal.

"For searching any index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

"For each entry of discharge or satisfaction of mortgage, lien or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, fifty cents (50¢);

"For administering an oath with certificate and seal he shall make no charge;

"For taking and certifying an acknowledgment, with



HeinOnline -- 1963 vol. II 1096 1963

seal affixed, for signature thereto he shall make no charge;

"For recording and indexing any instrument which may be recorded pursuant to the provisions of section 73-104, Revised Codes of Montana, 1947, and which pertains to land allotted to an Indian or land within an Indian Reservation, except fee patents, he shall make no charge;

*"For filing, indexing, or other services provided for by Part 4 of the Uniform Commercial Code—Secured Transactions, such fees as are prescribed therein.*

"For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

Duty of county clerk to endorse charges.

"On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office."

Amending clause.

Section 11-116. Title 20, chapter 3, of the Revised Codes of Montana, 1947, "Deposit for Keeping—Storage —Unclaimed Property," is hereby amended by incorporating therein a new section 20-314, as follows:

Application of law.

"20-314. **Uniform Commercial Code — applicability.** The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code."

Amending clause.

Section 11-117. Subsection (2) of section 32-1905 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Required statement on bonds.

"(2) All bonds issued under this act shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter provided for. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same

Validity of signatures.



HeinOnline -- 1963 vol. II 1097 1963

effect as though they had remained in office until such delivery. All such bonds shall be *fully* negotiable (matter deleted), *as provided by the Uniform Commercial Code—Investment Securities.*''

Bonds shall be negotiable.

Amending clause.

Section 11-118. Section 45-109 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Lien on future interest.

''45-109. **Lien on future interest.** An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. *Except as otherwise provided by the Uniform Commercial Code,* in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.''

Amending clause.

Section 11-119. Section 45-112 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Contracts for forfeiture void.

''45-112. **Certain contracts void.** *Except as otherwise provided by the Uniform Commercial Code:* all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.''

Amending clause.

Section 11-120. Section 45-116 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Lienholder's right to compensation.

''45-116. **Holder of lien not entitled to compensation.** *Except as otherwise provided by the Uniform Commercial Code:* One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under section 47-109 and 47-110.''

Amending clause.

Section 11-121. Section 45-301 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Right of redemption.

''45-301. **Right to redeem.** *Except as otherwise provided by the Uniform Commercial Code,* every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.''



HeinOnline -- 1963 vol. II 1098 1963

Amending clause.

Section 11-122. Section 45-308 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Extinguishment of lien—restoration.

"45-308. **When restoration extinguishes lien.** *Except as otherwise provided by the Uniform Commercial Code:* the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration."

Amending clause.

Section 11-123. Section 45-704 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of seed lien.

"45-704. **Acknowledgment of satisfaction of lien.** Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, *within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops,* he is liable to any person injured thereby in the amount of such injury and the costs of the action."

Liability.

Amending clause.

Section 11-124. Section 45-707 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of hail lien.

"45-707. **Satisfaction of lien.** Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted) within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record."

Liability.



HeinOnline -- 1963 vol. II 1099 1963

Amending clause.

Section 11-125. Section 45-809 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of thresherman's lien.

"45-809. **Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, *within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops,* he is liable to any person injured thereby in the amount of such injury and the costs of action."

Liability.

Amending clause.

Section 11-126. Section 45-911 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of farm laborer's lien.

"45-911. **Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, *within thirty (30) days after being requested to do so by a person having a property interest in such crops,* he is liable to any person injured thereby in the amount of such injury and costs of action."

Liability.

Amending clause.

Section 11-127. Section 45-1106 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Special possessory liens—agister or service.

"45-1106. **Agisters' liens and liens for service—priority.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are intrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for



HeinOnline -- 1963 vol. II 1100 1963

the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over (matter deleted) *perfected security interests under the Uniform Commercial—Secured Transactions,* or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said (matter deleted) *secured party* or other lien-holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Priority.

Notice.

"Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the (matter deleted) *secured party* or other lien-holder at his last known postoffice address. Said service shall be deemed complete upon the deposit of the notice in the postoffice."

Service.

Section 11-128. Section 45-1107 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

"45-1107. **Secured party may take possession of property.** Within ten days after the date of such mailing, or five days after such personal service, the (matter deleted) *secured party* or other lien-holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such (matter deleted) *secured party* or other lien-holder so to do shall constitute a waiver of the priority of such (matter deleted) *security interest* or other lien *over the lien created by this act.*"

Secured party may take possession—payment of lien.

Waiver.

Section 11-129. Section 45-1410 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

"45-1410. **Acknowledgment of satisfaction and discharge of lien—penalty for failure.** Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, *within thirty (30) days after being requested*

Duty of lienor to acknowledge satisfaction of crop spraying lien.

Liability.



HeinOnline -- 1963 vol. II 1101 1963

*to do so by a person having a property interest in such grain or crops,* he is liable to any person injured thereby in the amount of such injury and the costs of action."

Amending clause.

Section 11-130. Section 47-124. of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Legal interest—six per cent.

"47-124. **Legal interest.** *Except as otherwise provided by the Uniform Commercial Code* Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year."

Amending clause.

Section 11-131. Section 52-114 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Recording—assignment of mortgage—effect.

"52-114. **Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.** An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage (matter deleted) and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Assignee's address required.

"Any such assignment shall contain the assignee's post office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post office address."

Amending clause.

Section 11-132. Section 52-116 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Recording subordination or waiver agreements—effect.

"52-116. **Recording of subordination or waiver agreements—real estate.** That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any read estate mortgage of record (matter deleted) *or* the property therein included may be recorded in like manner as a real estate mort-



HeinOnline -- 1963 vol. II 1102 1963

gage (matter deleted), and such record (matter deleted) shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved."

Amending clause.

Section 11-133. Title 52, chapter 1, of the Revised Codes of Montana, 1947, "Mortgages in General," is hereby amended by incorporating therein a new section 52-117, as follows:

"52-117. **Uniform Commercial Code — applicability.** In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern."

Application of law.

Amending clause.

Section 11-134. Section 52-212 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"52-212. **Mortgages and deeds of trust covering real and personal property.** All mortgages *and* deeds of trust (matter deleted) *covering* both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property (matter deleted) *so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned.*"

Law governing mortgages and deeds of trust.

Amending clause.

Section 11-135. Section 52-312 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"52-312. **Foreclosure of security interests in personal property—by action—by sheriff's sale.** An action for the foreclosure of a (matter deleted) *security interest in* personal property (matter deleted) may be commenced and conducted in the same manner as provided by law for the foreclosure of morgtages upon real property, and the same may be joined in an action for the recovery of the possession of the property (matter deleted) *subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.*

Action—foreclosure of security interest in personal property.



HeinOnline -- 1963 vol. II 1103 1963

Sheriff's sale.

*"A security agreement covering personal property may contain* a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, (matter deleted) *on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it*

Duty of sheriff.

*is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and* to advertise and sell the whole or any part of the (matter deleted) *same;* and at such sale (matter deleted) *the secured party,* or his representatives or assigns, may, in good faith, purchase

Indemnity.

the property so sold, or any part thereof. The sheriff (matter deleted) *shall* require a *reasonable* indemnity bond from the (matter deleted) *secured party* or his assigns before taking possession of or selling the (matter deleted)

Application of law.

*said* property. Notice of sale, (matter deleted) *application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 of the Uniform Commercial Code."*

Amending clause.

Section 11-136. Section 52-313 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Time for sheriff's sale.

"52-313. **Sales — commencement and postponement.** All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed.

Postponement.

Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the (matter deleted) *debtor."*

Amending clause.

Section 11-137. Section 52-314 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Report of sale.

"52-314. **Report of sales, and filing thereof.** Within ten days after the sale of any (matter deleted) property *subject to a security interest,* as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received



HeinOnline -- 1963 vol. II 1104 1963

therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, (matter deleted), a statement (matter deleted) *of the manner in which notice of the sale was given,* and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, *or other filing officer,* where the (matter deleted) *financing statement respecting the security agreement* is filed; which report shall be received in all courts as prima facie evidence of the fact therein stated. The county clerk and recorder *or other filing officer* shall properly index said report and attach the report of sale to the (matter deleted) *financing statement* on file."

Filing.

Evidence.

Duty of filing officer.

Section 11-138. Section 52-319 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

"52-319. **Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.** The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of (matter deleted) *security agreements,* renewals, assignments and satisfactions thereof (matter deleted) *covering* livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the (matter deleted) *secured party,* who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any (matter deleted) *secured party* for the proceeds of livestock sold through such livsetock market by the (matter deleted) *debtor* unless notice of such (matter deleted) *security agreement* is filed as hereinbefore provided."

Duties of general recorder of marks and brands—filing—notice of livestock agreements.

Forms.

Liability of livestock market.

Section 11-139. Section 52-320 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

"52-320. **Contents of notices.** Such notices shall con-

Contents of notice.



HeinOnline -- 1963 vol. II 1105 1963

sist of a statement showing the date of (matter deleted) *security agreement,* the (matter deleted) *names and addresses* of the (matter deleted) *debtors and secured parties,* and/or holders and owners thereof, a description of the livestock covered by said (matter deleted) *security agreement,* (matter deleted) and in case of notice of renewal, the notice shall state the date of renewal thereof (matter deleted) and in the case of a notice of assignment of a (matter deleted) *security interest,* such notice shall state the date of such assignment, (matter deleted) and a description of the (matter deleted) *security agreement as to which such assignment is made* and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana."

Amending clause.

Section 11-140. Section 52-321 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of secured party to file satisfaction.

"52-321. **Duty of secured parties to file satisfactions of security agreements.** It shall be the duty of the (matter deleted) *secured parties,* who filed notices of (matter deleted) *security agreements,* renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such (matter deleted) *security agreements* with the general recorder of marks and brands immediately upon the satisfaction of said (matter deleted) *security agreement.*"

Amending clause.

Section 11-141. Section 52-322 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Fees—deposit in livestock commission fund.

"52-322. **Fees—disposal of.** The general recorder of marks and brands shall charge for filing and listing such notices of (matter deleted) *security agreements* the sum of one dollars ($1.00) for each recorded brand listed in each (matter deleted) *security agreement,* and for filing and listing each notice of satisfaction or renewal or assignment of such (matter deleted) *security agreement,* the sum of one dollar ($1.00) for each recorded brand listed therein. All fees so charged shall be paid into the livestock commission fund."

Amending clause.

Section 11-142. Section 52-323 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"52-323. **Brand recorder or livestock commission not responsible for collection or payment of money under se-**



HeinOnline -- 1963 vol. II 1106 1963

**curity agreements.** Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either (matter deleted) *debtor or secured party* for the collection or payment of any money due the holder of any *security agreement covering* livestock (matter deleted), or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith."

Liability of recorder and livestock commission.

Section 11-143. Section 53-110 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

"53-110. **Filing of liens, rights, procedure, fees.**

"(a) No chattel mortgage, conditional sales contract, lease or other lien on a motor vehicle shall be valid as against creditors, subsequent purchasers or encumbrancers unless and until such mortgage, conditional sales contract, lease or other lien, or a true copy thereof certified by a notary public has been filed with the registrar of motor vehicles as hereinafter provided; the registrar shall not file any mortgage, conditional sales contract, lease or other lien unless such mortgage, conditional sales contract, lease or other lien is accompanied by the certificate of ownership of such vehicle, except in the sale of a new motor vehicle by a duly licensed dealer, and when such mortgage, conditional sales contract, lease or other lien or certified copy thereof is so presented for filing the registrar shall file the same entering upon his records the name and address of the mortgagee, conditional sales vendor, lessor, or other lienor together with the amount of the lien and he shall at the same time endorse the same information upon the face of the certificate of ownership, mailing a statement certifying to the filing of such mortgage, conditional sales contract, lease or other lien, to the mortgagee, vendor, or other lienor and mail the certificate of ownership to the owner at the address given on said certificate. The owner being the person entilted to operate and possess such motor vehicle. (Matter deleted.)

Filing of liens on motor vehicles with registrar.

Duty of registrar.

"(b) *Satisfactions or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof,*

Duty of registrar to retain satisfactions for eight years.

Duty to retain liens for eight years.



HeinOnline -- 1963 vol. II 1107 1963

*shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.*

Effect of filing.

"(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

Remedies of mortgagee or vendor after default.

"(d) Upon default under a chattel mortgage *or conditional soles contract* covering a motor vehicle the mortgagee (matter deleted) *or vendor has the same remedies* as in the case of other personal property, (matter deleted) *except that the remedy of seizure* prescribed by section (matter deleted) *52-312 shall be available* upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles *and such undertaking as may be required by the sheriff* (matter deleted). In case of attachment of motor vehicles all the provisions of section (matter deleted) *93-4338* shall be applicable except *that* deposits must be made with the registrar of motor vehicles (matter deleted).

Liability for failure to file satisfaction.

"(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of

Penalty—deposit in automobile theft fund.

motor vehicles the sum of one dollar ($1.00) for each and every day thereafter that he fails to file such satisfaction. All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund.

"(f) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the registrar shall within 24 hours, mail to the owner, conditional sale vendor, mortgagees, or assignee of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in



HeinOnline -- 1963 vol. II 1108 1963

the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

"(g) It shall not be necessary to refile with the registrar of motor vehicles any instruments on file in the offices of the county clerks and recorders at the time this law takes effect. Refiling unnecessary.

"(h) A fee of one dollar ($1.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of one dollar ($1.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of fifty cents ($.50) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument on file with the registrar." Registrar's fees.

Section 11-144. Title 59, chapter 5, of the Revised Codes of Montana, -1947, as amended, "Prohibitions and General Provisions Applicable to Public Officers," is hereby amended by incorporating therein a new section 59-516.1, as follows: Amending clause.

"59-516.1. **Security agreements.** Termination statements filed under the Uniform Commercial Code—Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code—Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed." Duty of filing officer to retain for eight years.

Section 11-145. Section 66-202 of the Revised Codes of Montana, 1947, is hereby amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. II 1109 1963

Auctioneer's authority to bind.

"66-202. **Auctioneer's authority from the bidder.** An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in (matter deleted) *section 66-219.*"

Amending clause.

Section 11-146. Section 67-1301 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Property affixed to land.

"67-1301. **Fixtures.** When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 67-1307 *and in the Uniform Commercial Code,* belongs to the owner of the land, unless he chooses to require the former to remove it."

Amending clause.

Section 11-147. Title 67, chapter 14, of the Revised Codes of Montana, 1947, "Acquisition of Personal Property by Accession," is hereby amended by incorporating therein a new section 67-1410, as follows:

Application of law.

"67-1410. **Uniform Commercial Code—applicability.** The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code."

Amending clause.

Section 11-148. Section 72-211 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Corporate authority to borrow money—issue bonds.

"72-211. **May borrow money and secure payment.** Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sum of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. (Matter deleted.)"

Amending clause.

Section 11-149. Section 72-224 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority of railroad corporation to issue and negotiate bonds.

"72-224. **May issue and secure bonds.** Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its



HeinOnline -- 1963 vol. II 1110 1963

authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct (matter deleted)."

Amending clause.

Section 11-150. Title 74, chapter 3 , of the Revised Codes of Montana, 1947, "Rights and Obligations of Seller —Delivery and Warranty," is hereby amended by incorporating therein a new section 74-325, as follows:

Application of law.

"74-325. **Uniform Commercial Code—applicability.** This chapter shall not apply to sales subject to the Uniform Commercial Code."

Amending clause.

Section 11-151. Title 74, chapter 5, of the Revised Codes of Montana, 1947, "Exchange," is hereby amended by incorporating therein a new section 74-505, as follows:

Application of law.

"74-505. Uniform Commercial Code — applicability. The provisions of this chapter shall not apply to exchanges subject to the Uniform Commercial Code."

Amending clause.

Section 11-152. Section 74-608 of the Revised Codes of Montana, as enacted by Laws of Montana 1959, ch. 282, is hereby amended to read as follows:

Limitations on finance charges—retail installment transactions.

"74-608. **Finance charge limitation.** (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:

"(1) As to motor vehicles:

"Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars ($7) per one hundred dollars ($100) per year.

"Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the



HeinOnline -- 1963 vol. II 1111 1963

sale is made—nine dollars ($9) per one hundred dollars ($100) per year.

"Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars ($11) per one hundred dollars ($100) per year.

"(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11), per one hundred dollars ($100) per year; (ii) if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); (iii) if the principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000).

Computation.

"(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) [74-607(f)] of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance therefore is required to be paid in installments. A minimumfinance charge of twenty dollars ($20) may be charged on any retail installment transaction.

Minimum.

Permitted yield.

"(c) When a retail installment contract provides for payment, other than in equal successive monthly installmants, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

(Matter deleted)."

Amending clause.

Section 11-153. Section 79-1905 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Contents and terms—refunding bonds issued by municipality.

"79-1905. **Terms of refunding bonds.** The refunding bonds may be issued in one or more series, may bear such



HeinOnline -- 1963 vol. II 1112 1963

date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date therof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, *fully* negotiable (matter deleted) *within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities.*''

Bonds shall be negotiable.

Section 11-154. Section 88-152 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

''88-152. **Penalty for warehouseman to issue duplicate negotiable receipt when original is outstanding without marking the same 'duplicate.'** A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word 'duplicate,' except in the case of a lost, *stolen* or destroyed receipt after proceedings as provided for in section (matter deleted) *7-601 of the Uniform Commercial Code,* shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.''

Crime to issue duplicate negotiable document without marking.

Penalties.



HeinOnline -- 1963 vol. II 1113 1963

Amending clause.

Section 11-155. Section 88-154 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"88-154. **Penalty for delivering goods against which negotiable receipt is outstanding without obtaining possession of same.** A warehouseman, or any officer, agent, or servant of a warehouseman who delivers good out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such good (matter deleted) *is* outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except (matter deleted) *where the receipt has been lost, stolen or destroyed or the goods have been lawfully sold or disposed of to satisfy a warehouseman's lien been lost, stolen or destroyed or the goods have been lawor because of their perishable or hazardous nature,* be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both."

Crime to deliver goods without obtaining negotiable warehouse receipt.

Penalties.

Amending clause.

Section 11-156. Subsection (2) of section 89-109 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"(2) All bonds issued under this act shall contain a statement on their face that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter set forth. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. All such bonds shall be (matter deleted) *fully* negotiable (matter deleted), *as provided by the Uniform Commercial Code—Investment Securities.* Such bonds shall not constitute or be a debt, liability or obligation of the state, and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property and facilities to be acquired out of the proceeds of such bonds."

Required statement on face of bonds—validity of signatures.

Bonds shall be negotiable.

Limitations.

Amending clause.

Section 11-157. Section 93-2802 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"93-2802. **Assignment of thing in action not to preju-**



HeinOnline -- 1963 vol. II 1114 1963

**dice defense.** In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off or other defense existing at the time of, or before, notice of the assignment; but this section (matter deleted) *shall apply* (matter deleted) *only to the extent not otherwise provided for in the Uniform Commercial Code.*''

Assignment of thing in action shall not prejudice defense.

Section 11-158. Section 93-3403 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

''93-3403. **Counterclaim—rules thereof.** ''*A* (matter deleted) counterclaim (matter deleted) *on a contract* is subject to the following rules:

Counterclaim subject to rules.

''1. *Except as otherwise provided by the Uniform Commercial Codes* If the action is founded upon a contract, which has been assigned by the party thereto, (matter deleted) a demand existing against the party thereto, or an assignee of the contract, at the time of the assignment thereof, and belonging to the defendant, in good faith, before notice of the assignment, must be allowed as a counterclaim, to the amount of the plaintiff's demand, if it might have been so allowed against the party, or the assignee, while the contract belonged to him.

Assignment.

(Matter deleted.)

''2. If the plaintiff is a trustee for another, or if the action is in the name of the plaintiff, who has no actual interest in the contract upon which it is founded, a demand against the plaintiff shall not be allowed as a counterclaim; but so much of a demand existing against the person whom he represents, or for whose benefit the action is brought, as will satisfy the plaintiff's demand, must be allowed as a counterclaim, if it might have been so allowed in an action brought by the person beneficially interested.''

Demand—plaintiff as trustee.

Section 11-159. Section 93-4301 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Amending clause.

''93-4301. **When attachment may issue.** The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, as follows:

Plaintiff's right to attachment.



HeinOnline -- 1963 vol. II 1115 1963

"In an action upon a contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real (matter deleted) property, (matter deleted )or, if originally secured, such security has, without any act of the plaintiff, or the person to whom the security was given, becomes valueless, and in an action based upon a statutory stockholders' liability."

Amending clause.

Section 11-160. Section 93-4302 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of clerk to issue writ—Affidavit on attachment.

"93-4302. **Affidavit—what to contain.** The clerk of the court must issue the writ of attachment, upon receiving affidavit by or on behalf of the plaintiff, showing:

"1. That such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal counterclaims) upon a contract, express or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real (matter deleted) property, (matter deleted) or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; and

"2. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant."

Amending clause.

Section 11-161. Subdivision 4 of section 93-4307 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Investment securities subject to attachment, execution.

"4. *Investment securities as defined in the Uniform Commercial Code may be attached or levied upon only by seizure by the officer making the attachment or levy; provided, that such a security which has been surrendered to the issuer may be attached or levied upon by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the security of the defendant is attached in pursuance of such writ.* Stocks or shares, or interest in stocks or shares, of any corporation or company, *other than such investment securities,* (matter deleted) *may* be attached *either by seizure or* by leaving with the president, or other head of the same, or the



HeinOnline -- 1963 vol. II 1116 1963

secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ."

Amending Clause.

Section 11-162. Section 93-4338 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Attachment proceedings—personal property subject to security interest.

"93-4338. **Attachment of personal property subject to a security interest.** Personal property (matter deleted) *subject to a security interest* may be taken on atachment or execution issued at the suit of a creditor of the (matter deleted) *debtor under the security agreement;* but before the property is so taken, the officer *levying the writ* must pay or tender to the (matter deleted) *secured party* the amount of the (matter deleted) *security agreement* debt and interest, or must deposit (matter deleted) *the same* with the county treasurer of the county in which the (matter deleted) *financing statement covering the security agreement* is filed, *if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer,* payable to the order of the (matter deleted) *secured party;* and when the property then taken is sold under process, the officer *levying the writ* must apply the proceeds of the sale (matter deleted) *as follows*:

Application—proceeds of sale.

"1. *To the repayment of the sum paid to the secured party, with interest from the date of such payment; and,*

"2. *The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.*

Affidavit of secured party.

*"The secured party under any security agreement of record shall, upon fifteen days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a judment or demand of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed, an affidavit showing the amount of the indebtedness then actually due and owing to the secured party, and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, and all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, and all payments*



HeinOnline -- 1963 vol. II 1117 1963

*of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and showing the balance then remaining due and unpaid to the secured party. If within fifteen days from the service of any such demand in writing on the secured party by any creditor of the debtor the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on attachment or execution. In the event the amount shown to be due is paid to the county treasurer, or to a filing officer as aforesaid, or to the secured party, in satisfaction of the security agreement by any attaching or execution creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which said security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the attaching or execution creditor. In the event the property is sold under attachment or execution, such attaching creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement, or an amount in excess thereof.''*

Effect—failure to file on written demand.

Payment—duty to surrender documents.

Adenming clause.

Section 11-163. Section 93-4344 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Possession of livestock under mortgage—filing notice.

''93-4344. **Possession under a mortgage—how acquired.** In all cases where it is necessary, under the laws of this state, for a party to any mortgage, assignment, bill of sale, or other contract, between the first day of November and the next succeeding fifteenth day of May, to take possesion of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale, or other contract, it is sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the (matter deleted) *general recorder of marks and brands* within five days after it becomes necessary for him to so take custody and possession of the same.''



HeinOnline -- 1963 vol. II 1118 1963

Amending clause.

Section 11-164. Section 93-4346 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of County Clerk to record brands.

"93-4346. **Duty of county clerk and recorder of marks and brands to record papers.** It is the duty of the county clerk *and of the general recorder of marks and brands* to file all papers deposited with (matter deleted) *them* for that purpose, and required to be filed under the provisions of the three preceding sections, and preserve the same as other records of (matter deleted) *their offices* are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same."

Amending clause.

Section 11-165. Section 93-5811 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Execution against one partner.

"93-5811. **Execution against one of a partnership.** If execution is levied upon the interest of one or more parties in the goods and property of a partnership, the same proceedings shall be had as in attachments, provided in sections 93-4336 and 93-4337. (Matter deleted.)"

Amending clause.

Section 11-166. Section 93-6001 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Proceedings in foreclosure suits.

"93-6001. **Proceedings in foreclosure suits.** There is but one action for the recovery of debt, or the enforcement of any right secured by mortgage upon real estate (matter deleted), which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale, and the payment of the costs of the court and the expenses of the sale, and the amount due the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered,



HeinOnline -- 1963 vol. II 1119 1963

and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action."

Amending clause.

Section 11-167. Section 93-6004 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Power of sale in real estate mortgage—remedies.

"93-6004. **Power of sale.** When a *real estate* mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this chapter to foreclose, or proceedings may be had under the provisions of the mortgage."

Amending clause.

Section 11-168. Title 93, chapter 60, of the Revised Codes of Montana, 1947, "Foreclosure of Mortgages, etc." is hereby amended by incorporating therein a new section 93-6010, as follows:

Application of law.

"93-6010. **Instruments—negotiability and remedies.** Nothing in this chapter shall be deemed to affect the negotiability of an instrument, and nothing in this chapter shall be deemed to limit remedies otherwise available to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured."

Amending clause.

Section 11-169. Section 93-8613 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Actions to foreclose—court must allow attorney's fee.

"93-8613. **Counsel fees on foreclosure.** In an action to foreclose a mortgage *of real property,* or (matter deleted) *a security interest in personal property,* the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the (matter deleted) *instrument* or any agreement between the parties to the contrary notwithstanding."

Amending clause.

Section 11-170. Section 93-401-22 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Construction of writings.

"93-401-22. **Writings—how construed.** A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or indorsers of a (matter deleted) *draft* or promissory note, that it has been protested for want of acceptance or payment must be held to import



HeinOnline -- 1963 vol. II 1120 1963

that (matter deleted) *any necessary presentment* for acceptance or payment (matter deleted) *has been made, that the instrument has been dishonored,* and that the holder looks for payment to the person to whom *the* notice is given."

Amending clause.

Section 11-171. Section 93-1401-7 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Statute of frauds—requirements of writing.

"93-1401-7. **Agreement not in writing—when invalid.** In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

"1. An agreement that by its terms is not to be performed within a year from the making thereof.

"2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105.

"3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

(Matter deleted.)

"4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Application of law.

*"This section shall not apply to agreements subject to the Uniform Commercial Code."*

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## CHAPTER NO. 265

An Act Providing for the Allowance of an Increase in Average Number Belonging for Budget Purposes Where a School District or County High School Anticipates an Unusual Increase in Enrollment in the En-



HeinOnline -- 1963 vol. II 1121 1963

suing year; and Providing the Procedure for Determining the Average Number Belonging.

*Be it enacted by the Legislative Assembly of the State of Montana:*

School district or county high school anticipating increased enrollment may increase foundation program—computation.

Section 1. A school district or county high school which anticipates an unusual increase in enrollment in the ensuing year may increase its foundation program for the ensuing year in accordance with the following provisions:

(1) For the school district or county high school, the average number belonging approved for foundation program purposes for the current year and each of the immediately preceding three (3) years shall be used to compute the annual percentage increase in average number belonging of each of the years over the immediately preceding year. The three (3) increases shall be averaged to obtain the average annual percentage increase in average number belonging.

(2) On or about May 1 of the current year, the estimated average number belonging for the entire current school year shall be computed, based on pupil attendance and absence records through April 30, increased by the ratio that the total number of school days in the current term bears to the number of school days completed through April 30.

Procedure.

(3) On or about May 1, the board of trustees shall estimate the probable average number belonging to be attained in the ensuing school year, based on such factual information as may be available to the board. The board of trustees shall submit such estimated average number belonging to the county board of school budget supervisors on or before May 10, for approval of the estimate as the probable average number belonging to be attained during the ensuing year. The estimate shall be accompanied by such data as the county board of budget supervisors may require. The county board of budget supervisors shall act to approve or disapprove the estimated average number belonging on or before May 25, and may adjust any estimate submitted. The county board of budget supervisors shall immediately notify the superintendent of public instruction of the action taken by the board, together with such facts and information as the superintendent of public instruction may deem necessary.



HeinOnline -- 1963 vol. II 1122 1963

The superintendent of public instruction shall approve, disapprove, or adjust the estimate and so notify the board of trustees.

(4) The percentage increase of the average number belonging estimated for the ensuing year approved as in (3) above, over the estimated average number belonging for the current year computed as in (2) above, shall be computed. Formula.

(5) Whenever the increase computed in (4) above is at least twice the average annual increase computed in (1) above, the school district or county high school, for the purpose of determining the amount of its foundation program for the ensuing year, may increase the actual average number belonging for the current year by a number to be computed as follows:

(a) Apply the average annual percentage increase as computed in (1) above to the actual average number belonging of the current year to determine the usual average number belonging which would be attained in the ensuing year under normal conditions;

(b) Deduct from the estimated average number belonging for the ensuing year approved as in (3) above, the usual average number belonging for the ensuing year as determined in (a) above. The difference shall be the maximum additional average number belonging which may be added to the actual average number belonging for the purpose of establishing the ensuing year's foundation program.

Section 2. The provisions of this act shall not apply to any district or high school in which the average annual percentage increase in average number belonging as computed in subsection (1) of section 1 is less than three per cent (3%). Limitation.

Section 3. The provisions of this act shall be in addition to, and not a limitation upon, the provisions of section 75-3611 with respect to anticipated increases in average number belonging. Saving clause.

Approved March 14, 1963.

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## CHAPTER NO. 266

An Act Relating to the Management and Control of the



HeinOnline -- 1963 vol. II 1123 1963

State Soldiers Home, State Hospital, State Prison, State Tuberculosis Sanitarium, Home for Senile Men and Women, State Industrial School, State Training School and Hospital, Montana Children's Center, and State Vocational School for Girls; Abolishing the Board of Commissioners for the Insane and the Various Executive Boards, Boards of Trustees, and Boards of Managers of Such Institutions; Vesting Control and Management of Such Institutions in a State Department of Public Institutions; Generally Revising Chapters of the Code Relating to Such Institutions; Amending Sections 80-302, 80-308, 80-310, 80-311, 80-313, 80-316, 38-102, 38-104, 38-107, 38-108, 38-109, 38-110, 38-119, 38-207, 38-502, 38-504, 38-505, 38-1002, 80-702, 80-703, 80-704, 80-705, 80-707, 80-707.1, Enacted As Section 1, Chapter 242, Laws of 1959, 80-707.5, Enacted as Section 5, Chapter 242, Laws of 1959, 80-711, 80-719, 80-720, 80-731, 80-732, 80-738, 80-740, 80-743, 80-745, 80-206, 80-207, 80-209, 80-210.1, 80-211, 80-212, 80-213, 38-802, 38-804, 38-805, 38-1101, 38-1108, 80-806, 80-809, 80-818, 80-819, 80-820, 80-902, 80-911, 80-922, 80-923, 80-924, 10-101, 10-105, 10-110, 10-112, 10-113, 10-114, 10-118, 10-120, 10-121, 75-301, 75-302, 75-303, 80-1101, R. C. M. 1947; And Repealing Sections 80-301, 80-304, 80-305, 80-306, 80-307, 80-309, 80-312, 80-314, 80-315, 80-317, 80-318, 80-319, 80-321, 80-322, 38-103, 38-105, 38-106, 38-111, 38-702, 38-901, 38-902, 80-706, 80-716, 80-717, 80-718, 80-735, 80-736, 80-737, 80-744, 80-747, 80-749, 80-202, 80-203, 80-204, 80-205, 80-208, 80-214, 80-216, 80-217, 38-801, 38-803, 38-817, 38-818, 80-801, 80-802, 80-803, 80-804, 80-805, 80-805.1, 80-808, 80-810, 80-812, 80-813, 80-814, 80-825, 80-826, 80-827, 80-901, 80-904, 80-906, 80-907, 80-908, 80-909, 80-910, 80-912, 80-913, 80-914, 80-916, 80-917, 80-930, 10-103, 10-104, 10-106, 10-107, 10-108, 10-109, 10-115, 10-116, 10-117, 75-312, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

State department of public institutions created—purpose.

Section 1. **Purpose of Act—Creation of department of institutions.** In order to utilize at maximum efficiency the resources of state government in a coordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the aged, to provide for children in need of



HeinOnline -- 1963 vol. II 1124 1963

temporary protection or correctional counselling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to coordinate and apply the principles of modern institutional administration to the public institutions of the state, the state department of public institutions is hereby created within the executive branch of the state government.

Definitions:

Section 2. **Definitions:** As used in this act.

"Department."

(1) "Department" means the state department of public institutions.

"Director."

(2) "Director" means the director of public institutions.

"Board."

(3) "Board" means the state board of public institutions.

"Public institution."

(4) "Public Institution" means any of the institutions listed in Section 3 of this act.

Jurisdiction—public institutions enumerated.

Section 3. **Institutions controlled.** The state department of public institutions shall generally control and supervise, and shall have jurisdiction over the officers, employees, moneys, property, lands and buildings of the following public institutions:

(1) Montana veterans' home

(2) State hospital

(3) State prison

(4) State tuberculosis sanitarium

(5) Montana center for the aged

(6) State industrial school

(7) State training school and hospital

(8) Montana children's center

(9) State vocational school for girls

Section 4. **Director of public institutions.**

Director.

(1) The director of public institutions is the chief executive and administrative officer of the department, and shall appoint the necessary employees for the department office and fix their compensation.



HeinOnline -- 1963 vol. II 1125 1963

Qualifications.

(2) The director shall be a person qualified by experience, training and high professional competence in institutional management. If possible, he shall be a member of a national professional organization of hospital or institutional administrators.

Appointment.

(3) The board shall appoint the director.

Powers and duties of board.

Section 5. **Powers and duties of Board.** The Board has the power and duty, to

Rules and regulations.

(1) Adopt general rules and regulations, not inconsistent with law, for the government of the department and for the government of public institutions. Such rules and regulations may govern and provide for

(a) The admission, custody, transfer and release of inmates or residents of public institutions. Provided, however, that no such rules or regulations shall amend, alter, or change the powers and duties of the state board of pardons as contained in Chapter 98 of Title 94 of the Revised Codes of Montana, 1947, as amended.

(b) The acquisition, use, and transfer of materials, supplies, and produce, for and between institutions.

(c) The expenditure and receipt of moneys at public institutions.

(d) Nothing herein shall be construed to modify, cancel, or invalidate any contracts or contractual relationships or affect the right of the board to execute contracts.

Report to governor and legislative assembly.

(2) Report to the governor before the first day of November of each year and to the legislative assembly before the second Monday of each biennial legislative session. The reports shall fully describe the activities of the department and shall contain recommendations for the passage of any laws necessary for the improvement of public institutions.

Bonds.

(3) Require bonds for officers and employees of public institutions and the department in such amounts and form as may be necessary.

Budget.

(4) Review and approve all budget requests for public institutions prior to submittal to the director of the budget.



HeinOnline -- 1963 vol. II 1126 1963

Land classification and needs.

(5) Classify the lands connected with public institutions and determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all public institutions for the food products that can be grown or produced on the lands, and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in public institutions.

Utilization of other state services.

(6) Utilize the staff and services of other state agencies and units of the university of Montana, within their respective statutory functions, to carry out the purposes of this act.

Building program.

(7) Develop, in consultation with the administrative heads of public institutions, a systematic building program providing for the projected long range needs of public institutions.

Rehabilitation—local level.

(8) Encourage the establishment of programs at the local level for the rehabilitation of the physically and mentally disabled.

Appointment—administrative heads.

Section 6. **Appointment of administrative heads of institutions.** The board shall appoint an administrative head for each institution.

Powers and duties—administrative head of institution.

Section 7. **Powers of administrative heads of institutions—local advisory committees.** The administrative heads of public institutions are fully responsible for the immediate direction, management and control of their respective institutions, subject to the general policies and programs established by the department. Except as otherwise provided by law, the administrative head of each public institution may appoint and employ all assistants and employees required for the management of the institution placed in his charge, subject to approval by the director as to number and salary. The administrative head of a public institution may appoint a local advisory committee, without obligation to the state, to serve as a liaison agency with the community in which the institution is located.

State board of public institutions created—function.

Section 8. **State board of public institutions.** There is hereby created a state board of public institutions. The function of the board, in addition to other duties given to it by law is to advise and consult with the



HeinOnline -- 1963 vol. II 1127 1963

governor and director on the management of public institutions.

Appointment of board members.

Section 9. **Appointment and term of board members.** The board consists of five (5) members who shall be appointed by the governor with the advice and consent of the senate. The appointees shall be selected so that not more than three (3) are from the same congressional district and so that not more than three (3) are affiliated with the same political party. The original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

Term of office.

Qualifications—board members.

Section 10. **Qualifications of board members.** Board members shall be qualified by aptitude, experience or training.

Board shall elect officers—compensation of board members.

Section 11. **Officers of board—compensation of members.** The board shall elect a chairman and any other necessary officer. Board members shall receive twenty-five ($25.00) dollars per day and shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. The director shall act as secretary of the board.

Meetings—quorum.

Section 12. **Meetings—quorum.** The board shall meet once each quarter and may hold additional meetings on the call of the chairman or at the request of the director. Three members constitute a quorum for the transaction of business.

Amending clause.

Section 13. Section 80-302, R. C. M. 1947, is amended to read as follows:

State department of public institutions authorized to receive moneys for Montana veterans' home.

"80-302. *State department of Public Institutions* **authorized to receive and disburse moneys.** The state *department of public institutions* is hereby empowered and directed to receive and receipt for any and all moneys that may become due the state by reason of *any* act of Congress, and to turn the same into the state treasury for the use and benefit of the *Montana veterans'* home, to be disbursed and accounted for in the same manner as other money appropriated out of the state treasury for the maintenance of said home."



HeinOnline -- 1963 vol. II 1128 1963

Section 14. Section 80-308, R. C. M. 1947, is amended to read as follows: Amending clause.

"80-308. **Commandant—subordinate officers.** The *superintendent, who is the administrative head* of the *veterans'* home, shall be a resident of the state of Montana, and shall have served in the *armed forces* of the United States during a time when the United States of America was involved in war or a state of national emergency, and shall have received an honorable discharge therefrom. Qualifications—superintendent of veterans' home.

All subordinate officials and employees of the home shall preferably be selected from residents of the state who have served in the *armed forces* of the United States and have been honorably discharged therefrom." Veteran preference—employees.

Section 15. Section 80-310, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 80-310. **Who are eligible to admission.** Any *person who served in the armed forces* of the United States during time of war or declared national emergency, or who while a citizen of the United States, served in the *armed forces* of any of the allies of the United States and has returned to and lives in Montana, or during any troubles arising or growing out of any such war or wars, and has received honorable discharge therefrom, who at the time of admission is an invalid by reason of disease contracted, wounds received, old age, or by reason of other disability, and who has become unable to earn a livelihood by reason thereof, shall be eligible to admission to the benefits of the home under the rules and regulations prescribed by the *state department of public institutions,* on the certificate of disability by a county commissioner and the county physician of the county in which the applicant may reside; and the transportation of such applicant to said *veterans'* home shall be a proper county charge, and be paid by said county if the applicant is unable to pay the same; provided, that the benefits of said home shall not be extended to anyone who has not resided within the state of Montana for a period of one (1) year next preceding the date of his application, or to anyone who has not resided within the county from which he asks to be sent to the home for the period of three (3) months from the date of his application, nor to anyone convicted of a felony or of a crime involving moral turpitude, nor Eligibility for admission to veterans' home.



HeinOnline -- 1963 vol. II 1129 1963

shall anyone who has been an habitual drunkard be received without sufficient evidence of subsequent good conduct and reformation of character as may be satisfactory to said *state department of public institutions.*''

Amending clause.

Section 16. Section 80-311, R. C. M. 1947, is amended to read as follows:

Eligibility for admission—wives and widows of veterans.

''Section 80-311. **Admission of wives or widows.** The *state department of public institutions* is authorized and empowered to admit to the privileges of the home under such rules as *it* may prescribe, the wives or widows of *persons who have served in the armed forces* who are inmates or who may be or may have been eligible to admission as inmates and who were married to such *persons;* provided that no woman be admitted who has not attained the age of fifty (50) years.''

Amending clause.

Section 17. Section 80-313, R. C. M. 1947, is amended to read as follows:

Authority of state department to accept donations.

''Section 80-313. *Department* **may accept donations.** *The state department of public institutions* shall have the power, on behalf of the state, to accept donations of land, money, or other valuables by gift, bequest, or otherwise. All titles to land and improvements thereon shall be vested in the name of the state for the use of said veterans' home, so long as the same may be necessary, to revert to the state when the necessity for such home no longer exists.''

Amending clause.

Section 18. Section 80-316, R. C. M. 1947, is amended to read as follows:

Disposition if veterans' home inmate becomes insane.

''Section 80-316. **Insane inmates.** In case any member of the Montana *veterans'* home shall become insane, and shall be so adjudged according to the law, and shall be sent to *the state hospital,* such insane inmate shall not thereby lose his connection with said Montana *veterans'* home; and the proper officer of said *veterans'* home shall draw from the general government any proportion of the cost of maintaining such insane inmate to which such said *veterans'* home is entitled by law.''

Amending clause.

Section 19. Section 38-102, R. C. M. 1947, is amended to read as follows:

''Section 38-102. **Management**—*state department of*



HeinOnline -- 1963 vol. II 1130 1963

*public institutions.* The management, control, and supervision of the Montana state hospital located at Warm Springs, county of Deer Lodge, state of Montana, is hereby vested in the state *department of public institutions.*"

Management of Montana state hospital vested in state department of public institutions.

Section 20. Section 38-104, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 38-104. **Superintendent of state hospital.** A superintendent of the state hospital shall be *administrative head of the state hospital.*

Superintendent of state hospital is administrative head.

The superintendent and *one other employee of the state hospital to be named by the board,* in addition to the salaries provided for shall be entitled to draw from the hospital commissary food supplies for their respective families, not to exceed, however, in value the sum of fifteen hundred dollars ($1,500.00) per year for each family. Such food supplies so drawn shall be accounted for in the same manner as other supplies used at the state hospital."

Family food allowance.

Section 21. Section 38-107, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 38-107. *Department* **may send patient to friends.** The *department of public institutions* may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state."

Department may send insane person out of state to friends.

Section 22. Section 38-108, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 38-108. **May contract with some other institution.** The *department of public institutions* may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

Department may send insane person out of state to institution.

Section 23. Section 38-109, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 38-109. **Discharge of patients.** The *department of public institutions* must cause to be discharged from the Montana state hospital any patient upon the

Duty to cause discharge of patients from state hospital.



HeinOnline -- 1963 vol. II 1131 1963

written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the *department*, and every inmate on recovery must be ordered released, without requiring a sponsor."

Amending clause.

Section 24. Section 38-110, R. C. M. 1947, is amended to read as follows:

County maintenance of indigent person after discharge from state hospital.

"Section 38-110. **Maintenance of indigent persons on discharge.** Upon the discharge of any patient of the Montana state hospital, the *department* shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such patient is found to be in financial need the county board of public welfare shall properly care for and maintain the discharged patient under the provision of the public welfare act until such patient is able to care for himself or other provision has been made for such care."

Amending clause.

Section 25. Section 38-119, R. C. M. 1947, is amended to read as follows:

Payment for care of non-indigent insane.

"Section 38-119. **Insane person not indigent must be paid for.** None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person."

Amending clause.

Section 26. Section 38-207, R. C. M. 1947, is amended to read as follows:

Form of physician's certificate.

"Section 38-207. **Forms of certificates.** The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the *state department of public institutions.*"

Amending clause.

Section 27. Section 38-502, R. C. M. 1947, is amended to read as follows:

Superintendent may grant convalescent leave.

"Section 38-502. **Convalescent leave of patients from Montana state hospital.** The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state *department of public institutions.*"

Amending clause.

Section 28. Section 38-504, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 1132 1963

"Section 38-504. **Termination of convalescent leave.** All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state *department of public institutions,* and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state *department of public institutions,* that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state *department of public institutions,* certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital."

Termination of convalescent leave.

Return to custody.

Section 29. Section 38-505, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 38-505. **Report by person under whom patient is placed on convalescent leave.** The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state *department of public institutions* may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital."

Report required of person with whom patient is placed on convalescent leave.

Section 30. Section 38-1002, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 38-1002. **Director and staff.** The superintendent of the state hospital shall act as the director of said department and shall have immediate supervision over the operation thereof. In addition to the director, the staff of said department shall consist of such medical assistants and other employees of the state hospital as may be designated by the director, and such other medical specialists, psychologists, and social workers as may be appointed either permanently or for temporary periods by the director with the approval of the state *department of public institutions.*"

Director and staff of state department of mental hygiene.

Section 31. Section 80-702, R. C. M. 1947, is amended to read as follows:

Amending clause.



HeinOnline -- 1963 vol. II 1133 1963

Powers and duties of state department of public institutions—state prison.

"Section 80-702. *State department of public institutions* **has control of grounds, etc.** The *state department of public institutions* has full control of the state prison grounds, buildings, prison labor and prison property; has power to purchase or cause to be purchased, all needed commissary supplies, all raw material and tools necessary for any manufacturing purposes carried on at said prison; and to sell all manufactured articles, and collect the money for the same. The *department* has power to make all needful rules and regulations in regard to the management of the prison, the discipline of the convicts and the conduct and compensation of the guards and assistants."

Amending clause.

Section 32. Section 80-703, R. C. M. 1947, is amended to read as follows:

Officers of board of state prison commissioners—quorum.

"Section 80-703. **Officers of board.** The governor is the president, and the secretary of state secretary of the board *of state prison commissioners;* and any two thereof are a quorum, with full power to transact any business that may be required of such board."

Amending clause.

Section 33. Section 80-704, R. C. M. 1947, is amended to read as follows:

Duty of secretary—record of proceedings.

"Section 80-704. **Duty of secretary.** It is the duty of the secretary to keep, or cause to be kept, a full and complete account in a book or books to be kept for that purpose, of all the transactions and proceedings of the board *of state prison commissioners.*"

Amending clause.

Section 34. Section 80-705, R. C. M. 1947, is amended to read as follows:

Warden—administrative head of state prison—qualifications—salary.

"Section 80-705. **Warden.** The warden of the state prison *is the administrative head of the prison and* shall be a person trained through education and experience in a managerial capacity in a penal institution. The salary of the warden shall be not less than eight thousand four hundred dollars ($8,400.00) per year, payable in monthly installments.

Residence and commissary supplies allowed to warden.

The warden shall have a place of residence at the prison for himself and his family, free of charge, and he shall receive all utilities and other necessary items of expense incident to the maintenance thereof. Food and other provisions available at the prison commissary shall



HeinOnline -- 1963 vol. II 1134 1963

be furnished without cost to the warden for consumption and use at said residence."

Amending clause.

Section 35. Section 80-707, R. C. M. 1947, is amended to read as follows:

Powers and duties of warden.

"Section 80-707. **Same.** The warden has the general superintendence of prison discipline and prison labor; must keep, or cause to be kept, a book wherein shall be recorded the name, age, sex, occupation, place of birth, where sent from, the crime charged, date of incarceration, and the expiration of the term for which the prisoners therein confined were sentenced, and shall make out a correct monthly report of the same, and file such report with the secretary of the board *of state prison commissioners;* and shall securely and carefully file in his office all commitments of prisoners that may be sent to the state prison, and keep, or cause to be kept, a correct account, and certify any mileage that may be due to any sheriff or deputy sheriff for conveying prisoners to the state prison."

Amending clause.

Section 36. Section 80-707.1, R. C. M. 1947, enacted as Section 1, Chapter 242, Laws of 1959, is amended to read as follows:

Warden shall have staff of custodial officers.

"Section 80-707.1. **Appointment of custodial officers.** In the performance of his duties of superintending prison discipline and prison labor, the warden shall be assisted by a staff of custodial officers, to be composed of probationary correctional officers, correctional officers, lieutenants and captains."

Amending clause.

Section 37. Section 80-707.5, R. C. M. 1947, enacted as Section 5, Chapter 242, Laws of 1959, is amended to read as follows:

Term of service.

"Section 80-707.5. **Suspension, demotion and discharge.** Every person employed or appointed and designated as captain, lieutenant or correctional officer under and pursuant to the provisions of this act, except as above provided, shall continue in service and hold his position without demotion until suspended, demoted or discharged in the manner hereinafter provided, for one or more of the following causes:

Suspension, demotion or discharge— causes enumerated.

(a) Conviction of any crime involving moral turpi-



HeinOnline -- 1963 vol. II 1135 1963

tude in any court of competent jurisdiction subsequent to the commencement of such employment;

(b) Gross neglect of duty or wilful violation or disobedience of orders or regulations;

(c) Drinking intoxicating liquor, or being under the influence thereof, while on duty;

(d) Sleeping while on duty;

(e) Incapacity, or partial incapacity, materially affecting the employee's ability to perform his official duties;

(f) Gross inefficiency in performing duties;

(g) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate;

(h) Wilful disobedience of rules and regulations governing the conduct and discipline of custodial officers.

Form of charges against prison employee.

Any charge brought against any such employee must be in writing and signed and sworn to by the person making the same. It shall be filed with the warden, and a copy of the charges shall be served upon the accused employee. The warden shall make an investigation of any charge or charges against an accused employee, upon the filing thereof, and if he finds that any such charge is true, he may punish the offending party by reprimand, suspension without pay, demotion or dismissal, at the same time giving his reasons in writing to the board *of state prison commissioners.* Suspension shall be without pay and for a period not to exceed twenty (20) days. If the warden finds that such charges are false, he shall so notify the accused employee in writing.

Power of warden to punish.

Appeal to state board of prison commissioners.

Any employee who is so suspended, demoted or dismissed may appeal to the board of state prison commissioners by filing with such board a written request therefor within ten (10) days after he is notified of the warden's decision.

Open hearing.

It shall be the duty of the board *of state prison commissioners,* within thirty (30) days after the filing of such request, to conduct an open hearing upon said appeal.



HeinOnline -- 1963 vol. II 1136 1963

Powers of board in conduct of hearing.

The board *of state prison commissioners* shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers and other evidence at such hearing, and for that purpose to issue subpoenas and cause the same to be served and executed in any part of the state.

Rights of accused.

The accused employee shall be entitled to be confronted with the witnesses against him, and he, or his counsel, shall have an opportunity to cross-examine the same, and to introduce testimony and summon witnesses in his own behalf.

Decision.

Within fifteen (15) days after such hearing the board *of state prison commissioners* shall render its decision in writing. It shall file the same in its office and with the warden, and shall serve a copy thereof upon the accused employee.

Reinstatement after exoneration.

If the effect of the decision is to exonerate the accused employee, he shall be entitled to reinstatement and to reimbursement for any loss in salary caused by the charges against him."

Amending clause.

Section 38. Section 80-711, R. C. M. 1947, is amended to read as follows:

Warden may appoint musical director at prison—salary.

"Section 80-711. **Musical director at state prison — salary.** Such donations and the benefit to the state accruing in the reformation and education of prisoners should at all times be maintained by the state, if possible, and therefore the *warden* is hereby empowered to appoint a suitable person to act in the capacity of musical director at the prison, who shall receive a salary of two thousand five hundred dollars ($2,500.00) per year, payable monthly from funds available from interest accruing from the said trust fund, or from appropriations available."

Amending clause.

Section 39. Section 80-719, R. C. M. 1947, is amended to read as follows:

Powers of department to cause prisoner employment in prison.

"Section 80-719. **Labor of convicts.** The *state department of public institutions* may, in its discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits, and at hard labor, and furnish any convicts thus employed with any materials that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the state prison, and the *department* shall, in all respects, have the exclusive



HeinOnline -- 1963 vol. II 1137 1963

control of the employment of the convicts, and may from time to time employ them in such manner as, in its opinion, will best subserve the interest of the state and the welfare of the prisoners. But neither the *department* nor the warden must let by contract to any person the labor of any convict in the prison."

Contract for convict labor prohibited.

Amending clause.

Section 40. Section 80-720, R. C. M. 1947, is amended to read as follows:

Power of board to employ prisoners—incentive pay.

"Section 80-720. **Employment of convicts.** If, at any time, it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or enclosures of the state prison, either in improvement of the public grounds or buildings or otherwise where they may be profitably employed, *the department of public institutions* has power to so employ such labor; it must, in such case, direct the warden accordingly in writing. The *department of public institutions* may, upon recommendation of the warden of the Montana state prison, make payments of money to any inmate of the state prison as an incentive to satisfactorily perform his or her work in the various prison industries. It shall be the duty of the *department of public institutions* to authorize the payment of wages ranging from two cents (2c) to fifty cents (50c) per day depending on job grades. All jobs shall be graded according to the following criteria:

Job grading.

(a) Knowledge

(b) Skill

(c) Physical effort

(d) Responsibility for equipment and materials

(e) Regard for safety of others

(f) Working conditions.

Payment of wages.

All wages paid hereunder shall be paid from the "industrial revolving fund" as established by section 94-35-152.13, Revised Codes of Montana, 1947."

Amending clause.

Section 41. Section 80-731, R. C. M. 1947, is amended to read as follows:

"Section 80-731. **Labor of inmates of state penitentiary and Montana state hospital may be used for con-**



HeinOnline -- 1963 vol. II 1138 1963

**struction and repair of buildings.** The *department of public institutions* may use the labor of the male prisoners in the Montana state prison for construction or repair of buildings at the Montana state prison at Deer Lodge; and the *department of public institutions* may use the labor of the male inmates in the Montana state hospital for the construction and repair of buildings at the Montana state hospital at Warm Springs, Montana."

Labor of prisoners—repair of prison.

Labor of state hospital inmates—repair of state hospital.

Section 42. Section 80-732, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 80-732. **Escape of convicts.** The warden and officers of the prison shall incur no forfeiture for the escape of any convict employed without the walls or inclosures of the prison by order of the *department of public institutions,* or going to or returning from such employment, unless such escape should arise from neglect or violation of law, or the rules, regulations, or by-laws of the *department of public institutions.*"

No forfeiture for escape of convicts.

Exception.

Section 43. Section 80-738, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 80-738. *Limitations on convict punishment.* No barbarous punishments, by whipping, showering, or otherwise, must be prescribed *for convicts*; nor shall convicts, as punishment, be deprived of the regular rations of food, and at the same time compelled to work the usual number of hours per day."

Limitations on convict punishment.

Section 44. Section 80-740, R. C. M. 1947, is amended to read as follows:

Amending clause.

"80-740. **Good behavior allowance for *inmates* in certain employments.** The state *department of public institutions* is hereby authorized and required to adopt rules and regulations applicable to all *inmates* employed upon any prison work or activity whereby said *inmates* so employed, but only while so employed, may be granted good time allowance which shall operate as a credit of time from his sentence as imposed by the court, conditioned upon such *inmates'* good behavior and compliance with all rules and regulations which may be made by said *department* or warden of the state prison, for the management and control of said prison and such *inmates;* provided, said rules may grant not to exceed good time allowance of: ten

Department authorized to set up rules for good behavior allowances.

Limitations on time allowance.



HeinOnline -- 1963 vol. II 1139 1963

(10) days per month *for inmates assigned within the confines of the walls of the prison; thirteen (13) days per month for those inmates placed outside the confines of the walls of the prison; fifteen (15) days per month for those inmates who have been assigned outside the walls of the prison for a period of one year on a minimum status,* and further, provided, that *in the event of* an attempted escape *by the inmate,* or *a* violation of the rules and regulations so prescribed, *by the department or warden, the inmate may be punished by the forfeiture of any part of or all good time allowances.* The warden of the state prison shall advise *the department of public institutions of any attempted escape or violation of rules and regulations on the part of the inmate, and the department shall approve the forfeiture of any part of or all good time allowance."*

Forfeiture—violation of rules or escape.

Amending clause.

Section 45. Section 80-743, R. C. M. 1947, is amended to read as follows:

"Section 80-743. **County jails may be made prisons.** Whenever the state prison is insufficient to contain the prisoners sentenced to confinement therein, the *department of public institutions* must enter into contracts with the commissioners of such counties as have jails suitable for keeping convicts, that may thereafter be sentenced to confinement in the state prison, and must notify the district judges that such jails have been procured for state prison purposes, and such judges, until further notified, must sentence any prisoner convicted of a felony to one of the jails so designated."

Authority of department to contract county jails as state prison.

Amending clause.

Section 46. Section 80-745, R. C. M. 1947, is amended to read as follows:

"Section 80-745. **Insane convicts.** When the warden is of opinion that any prisoner is insane, he must certify the fact under oath to the *state department of public institutions,* which may, in its discretion, order the removal of such prisoner to the *state hospital.* As soon as the authorities of the *state hospital* ascertain that such person is not insane, they must immediately notify the *state department of public institutions* of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired."

Disposition—insane convict.

Amending clause.

Section 47. Section 80-206, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 1140 1963

"Section 80-206. *Superintendent. The administrative head of the sanitarium is the superintendent,* who shall be a well-educated physician, legally qualified to practice medicine in Montana, with an experience of at least six years in the actual practice of his profession, including at least a year's actual experience in a general hospital, and reasonable experience in the treatment of tuberculosis." Superintendent—administrative head of sanitarium—qualifications.

Section 48. Section 80-207, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 80-207. **Duties of** *superintendent.* The superintendent shall: Duties of superintendent—

1. Appoint such employees as are necessary and proper for a due administration of the affairs of such institution, prescribe their duties and offices, and, subject to the approval of the state *department of public institutions,* fix their compensation within the appropriation fixed therefor. Employees.

2. Oversee and secure the individual treatment and personal care of each and every patient in the sanitarium while resident therein, and keep a proper oversight of all the inhabitants thereof. Patient treatment.

3. Have the general superintendence of the buildings and grounds, with their furnishing and fixtures, and the selection and control of all persons employed in and about the same. Buildings and grounds.

4. Give from time to time such orders and instructions as he may deem best calculated to induce good conduct, fidelity, and economy in any department for the treatment of patients. Departmental orders.

5. Maintain a salutary discipline among all employees, patients, and inmates of the sanitarium, and enforce strict compliance with his instructions and obedience to all the rules and regulations of the sanitarium. He shall, under the supervision and control of the *state department of public institutions,* discharge such patients as are sufficiently restored to health. Discipline—enforcement. Discharge of patients.

6. Cause full and fair accounts and records of the conditions and prospects of the patients to be kept regularly from day to day, in books provided for that purpose. Accounts and records.



HeinOnline -- 1963 vol. II 1141 1963

Official correspondence.

7. Conduct the official correspondence of the sanitarium, and keep a record or copy of letters written and files of all letters received."

Amending clause.

Section 49. Section 80-209, R. C. M. 1947, is amended to read as follows:

Medical assistants—appointments—qualifications.

"Section 80-209. **Medical assistants and examining physicians.** All medical assistants shall be appointed by the *superintendent*. No medical assistant shall be appointed who is not a well-educated physician, legally qualified to practice medicine in Montana, and with an experience of at least two years in the actual practice of his profession, including at least one year's actual experience in a general hospital. The *superintendent* shall appoint, in all of the first, second and third-class cities of the state, reputable physicians, citizens of the state of Montana, who shall examine all persons applying for admission to said sanitarium for treatment. There shall be not less than one nor more than four such examining physicians appointed in cities of the first class, and not more than two in cities of the second and third class. Said examining physicians shall have been in the regular practice of their profession for at least five years, and shall be skilled in the diagnosis and treatment of diseases. Their fee or compensation, for each patient examined, shall not exceed three dollars."

Examining physicians—appointment—qualifications.

Compensation.

Amending clause.

Section 50. Section 80-210.1, R. C. M. 1947, is amended to read as follows:

Eligibility for admission to state sanitarium.

"Section 80-210.1. **Admission of patients to sanitarium.** The *superintendent* of the sanitarium is hereby given the power and authority to receive any person as a patient who is suffering from tuberculosis or what is commonly called miner's consumption. An applicant for admission to the sanitarium need not be a citizen or resident of the state of Montana for any length of time before be can be admitted as a patient. No person shall be admitted as a patient without certification by an examining licensed physician and surgeon that the applicant is suffering from tuberculosis or miner's consumption, such certification being in form and containing such information as determined necessary by the superintendent of the sanitarium. Applications with their certification shall be submitted to the health officer of the

Application.



HeinOnline -- 1963 vol. II 1142 1963

county where application is made or directly to the superintendent. Upon acceptance of a patient for admission to the sanitarium, the superintendent shall notify the referring physician and the state board of health. The medical staff of the sanitarium shall be the sole judge of who is afflicted with tuberculosis that may benefit by admission to the sanitarium.

Order of admission.

Admission to the sanitarium shall be made in the order in which the same of the applicant shall appear upon an application book to be kept by the superintendent. An applicant's name may only be entered if his application is accompanied by the certificate of an examining physician. Residents of Montana shall be entitled to admission to the sanitarium before applicants who are not residents. Provided, however, that where the next patient in order is a man and the only accommodations available in the sanitarium are for women or children, then women and children shall be admitted in their proper order and vice versa.

Admission—geriatric and senile patients.

In the event there are adequate facilities available at the Montana state tuberculosis sanitarium, the sanitarium may also accept geriatric and senile patients. Applications for admission, laws, rules and regulations pertaining to the care and custody of geriatric and senile patients in other state institutions shall apply to said geriatric and senile patients at the Montana state tuberculosis sanitarium."

Amending clause.

Section 51. Section 80-211, R. C. M. 1947, is amended to read as follows:

Admission of private patients.

"Section 80-211. **Private patients.** Applicants for admission to this institution who are able to pay for their care and treatment are not required to obtain a written request from the local authorities having charge of the relief of the poor, but shall apply in person to the *superintendent*, who shall enter the name of such applicant in the book to be kept by him for that purpose, as provided in the preceding section, and when there is room in said sanitarium for the admission of such applicant, without interfering with the preference in the selection of patients, which shall always be given to the indigent, such patient shall be admitted to the sanitarium upon the certificate of one of the examining



HeinOnline -- 1963 vol. II 1143 1963

physicians, which certificate shall be kept on file by the *superintendent.*''

Amending clause.

Section 52. Section 80-212, R. C. M. 1947, is amended to read as follows:

Payment for care of indigent patients

''Section 80-212. **Support of free patients—payment.** At least once in each month the *superintendent* of the sanitarium shall furnish to the local authorities of each county, city or town, as the case may be, having charge of the relief of the poor, a list of all the free patients in the sanitarium that are credited each respective county, city or town, and who are shown by the statement of such local authorities to be unable to pay for their care, treatment and maintenance, under the provisions of section 80-210. He shall accompany each such list with a bill of charges for care, treatment and maintenance at a rate not exceeding one dollar per day for each such free patient, together with items of expense of transportation, fee of the examining physician and the actual cost of articles of clothing furnished by the sanitarium to each such free patient. The treasurer of the sanitarium shall thereupon collect from the local authorities of the county, city or town, such sums as may be due therefrom, and pay the same over to the state treasurer.''

Amending clause.

Section 53. Section 80-213, R. C. M. 1947, is amended to read as follows:

Payment for care of private patients.

''Section 80-213. **Support of private patients.** The *state department of public institutions* shall have power and authority to fix the charges to be paid by patients who are able to pay for their care and treatment in said sanitarium, or who have relatives bound by law to support them who are able to pay therefor.''

Amending clause.

Section 54. Section 38-802, R. C. M. 1947, is amended to read as follows:

Purpose and object of state training school—subnormal persons.

''Section 38-802. **Purposes and objects of school.** The purpose and object of *the state training school and hospital* shall be the mental, moral and physical education and training of subnormal persons whose defects prevent them from receiving proper instruction and training in the public schools, or who are so mentally deficient that they are incapable of managing themselves or their affairs independently with ordinary prudence or of



HeinOnline -- 1963 vol. II 1144 1963

being taught to do so, or who require control and education for their own welfare and the welfare of others, and minors whose intelligence will not develop without such care; epileptics and subnormal adults whose defects prevent them from taking care of themselves or their property, or who, from social standards, are a menace to society."

Section 55. Section 38-804, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 38-804. **Powers and duties of superintendent.** The superintendent of the school, *who is its administrative head,* shall provide for the maintenance of a school department for the instruction and training of those inmates who are capable of being benefited by school instruction, and a custodial department for the care and custody of those who are not capable of being benefited by such school instruction, and may provide for giving any or all of the inmates of the school such instruction and training in unskilled labor, manual training, arts, crafts and trades as may be deemed suitable for such persons by *the state department of public institutions.*" Powers and duties of superintendent as administrative head of state training school.

Section 56. Section 38-805, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 38-805. **Eligibility for admission — exclusions.** There shall be admitted to the training school, in accordance with the provisions of this act, and such rules and regulations as may be adopted and provided by *the state department of public institutions* with regard thereto, the following persons, if they have been residents of this state for at least one (1) year immediately preceding application for admission: Subnormal persons whose defects prevent them from receiving proper instruction and training in the public schools, or who are so mentally deficient that they are incapable of managing themselves or their affairs independently with ordinary prudence or of being taught to do so, or who require control and education for their own welfare and the welfare of others, and minors whose intelligence will not develop without such care; epileptics and subnormal persons whose defects prevent them from taking care of themselves or their property, or who, from social standards, are a menace to society. Provided, however, Eligibility for admission to state training school.



HeinOnline -- 1963 vol. II 1145 1963

that no person who is insane, or who requires hospitalization, or who is dangerously diseased in body, or who is suffering from any infectious or contagious disease, or of confirmed immorality, shall be admitted to such school."

Amending clause.

Section 57. Section 38-1101, R. C. M. 1947, is amended to read as follows:

Definitions.

"Section 38-1101. **Definitions.** The following words and phrases when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

"Senile person."

(a) "Senile person" means any person who by reason of unsoundness of mind due to advanced years, is in such condition of mind and body as to be a fit subject for care and treatment in a home for senile persons; except that no person who is afflicted with insanity, epilepsy or feeblemindedness shall be regarded as a senile person, unless he is senile as above defined.

"Superintendent."

(b) "Superintendent" means the *administrative head* of the home for senile men and women.

"Home."

(c) "Home" means the home for senile men and women.

"Patient."

(d) "Patient" means any person for whose commitment as a senile person, proceedings have been instituted or completed."

Amending clause.

Section 58. Section 38-1108, R. C. M. 1947, is amended to read as follows:

Authority to transfer patients from state hospital to home for senile.

"Section 38-1108. **Transfer of patients from state hospital to home.** The superintendent of the hospital at Warm Springs, Montana, is authorized to have examinations of the patients at that institution made by competent doctors for the purpose of ascertaining whether some patients there should be transferred to the home, and if as a result of such examinations any persons are found to be senile, the state *department of public institutions* is authorized to order their transfer from the state hospital at Warm Springs, Montana, to the home."

Amending clause.

Section 59. Section 80-806, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 1146 1963

"Section 80-806. **Objects and purposes—commitment to school.** *The state industrial* school shall be for the keeping and reformatory training of all male youths between the ages of ten (10) and twenty-one (21) years who are residents of the state of Montana and who have been regularly committed to said school by a duly authorized court. Such youths shall be presented to the presiding officer of said school by an accompanying officer, employee of said school, parent or guardian, who shall likewise exhibit a certificate of commitment from the court ordering same."

Objects and purposes for state industrial school—commitment.

Section 60. Section 80-809, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 80-809. **Powers of** *superintendent.* The *superintendent is the administrative head of the school and shall manage* the school, subject, however, to the control of the state *department of public institutions.*"

Powers of superintendent as administrative head of state industrial school.

Section 61. Section 80-818, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 80-818. **Duration of custody.** Each boy committed to the state industrial school shall remain there until he arrives at the age of twenty-one (21) years, unless paroled or legally discharged; provided that it shall be lawful for the *department of public institutions* upon the recommendation of the *superintendent* of said school to discharge therefrom any boy who has arrived at the age of eighteen (18) years, if it be made to appear while there as an inmate he deported and conducted himself in such a manner as to make it reasonably probable that he has reformed and is a proper person to be discharged."

Duration of custody—good conduct.

Section 62. Section 80-819, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 80-819. **Commutation of sentence.** Whenever any *person* under the age of eighteen years has been sentenced by any court of competent jurisdiction to imprisonment in the state's prison, it shall be lawful for the governor, by and with the approval of the board of pardons, upon the application of such *person,* his parent or guardian, to commute the punishment by substituting therefor the commitment of such *person* to the Montana

Commutation of sentence—convict under age 18—commitment to state industrial school or state vocational school.



HeinOnline -- 1963 vol. II 1147 1963

state *industrial* school *or the state vocational school for girls,* during the minority of such *person,* unless sooner discharged under the regulations as herein provided. But should such *person,* after being sent to *one of such schools,* persist in a depraved course, or escape therefrom, it shall be in the power of the governor, by and with the approval of the board of pardons, to revoke such commutation, and remand him to the state's prison to serve out his unexpired term, and the time so spent by him at *one of such schools,* or while a refugee therefrom, shall not be considered as a part of his original term of commitment."

Revocation and remand for cause.

Amending clause.

Section 63. Section 80-820, R. C. M. 1947, is amended to read as follows:

Authority to release on parole—report—discharge.

"Section 80-820. **Releases on parole.** The board *of public institutions,* an recommendation of the *superintendent* of the school may release a boy on trial or parole, but in all cases where a boy is released on trial or parole, he must, at stated intervals, report his conduct to the *superintendent* and present certificates of good behavior, whereupon his leave or parole may be extended, or the board *of public institutions,* by unanimous vote, may grant him a full and unconditional discharge and order him finally released from the custody and control of such school. It shall be the duty of the *superintendent* to recall and return to the school any boy who may not be conducting himself properly, or who may not have a suitable home, and for such purpose such industrial school shall have sole custody and control over any boy so paroled until he shall have reached the age of twenty-one (21) years, or until he shall be finally discharged."

Recall to state industrial school for cause—custody.

Amending clause.

Section 64. Section 80-902, R. C. M. 1947, is amended to read as follows:

Purpose of state vocational school for girls.

"Section 80-902. **Purpose of school.** *The state vocational* school *for girls* is to be for the care, education, training, and safekeeping of girls between the ages of eight and twenty-one years, who are legally committed thereto by a court of record."

Amending clause.

Section 65. Section 80-911, R. C. M. 1947, is amended to read as follows:

Duty of superintendent as administrative head of vocational school.

"Section 80-911, *Superintendent,* **reports and duties of.** The *superintendent* of the state vocational school for girls, *who is the administrative head of the school,* shall be



HeinOnline -- 1963 vol. II 1148 1963

held responsible for the conduct of the state vocational school for girls."

Section 66. Section 80-922, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 80-922. **Term of commitment — paroles.** Each girl committed to the state vocational school for girls shall remain there until she arrives at the age of twenty-one years, unless paroled or legally discharged; provided, that it shall be lawful for the board *of public institutions* to discharge therefrom any girl, an inmate thereof, who has arrived at the age of eighteen years, if it be made to appear that while there as an inmate she deported and conducted herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged." Duration of commitment.

Section 67. Section 80-923, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 80-923. **Commutations of punishment to commitment to vocational school.** Whenever any girl under the age of eighteen years has been sentenced by any court of competent jurisdiction to imprisonment in the state prison, it shall be lawful for the governor, by and with the approval of the board of pardons, upon the application of such girl, her parent or guardian, to commute the punishment by substituting therefor the commitment of such girl to the state vocational school for girls during the minority of said girl, unless sooner discharged under the regulations as herein provided. But should such girl, after being sent to such school, persist in a depraved course, or escape therefrom, it shall be in the power of the governor, by and with the approval of the board of pardons, to revoke such commutation and remand her to the state prison to serve out her unexpired term, and the time so spent by her at the state vocational school for girls, or while a refugee therefrom, shall not be considered as a part of her original term of commitment." Commutation of sentence—female convict under age 18—commitment to vocational school. Revocation and remand for cause.

Section 68. Section 80-924, R. C. M. 1947, is amended to read as follows: Amending clause.

"Section 80-924. **Release and discharge.** The board *of public institutions,* on recommendation of the *superin-* Authority to release on parole—report—discharge.



HeinOnline -- 1963 vol. II 1149 1963

*tendent* of the school may release a girl on trial or parole, but in all cases where a girl is released on parole, she must, at stated intervals, report her conduct to the *superintendent* and present certificates of good behavior, whereupon her leave or parole may be extended, or the board *of public institutions,* by a unanimous vote, may grant her a full and unconditional discharge and order her finally released from the custody and control of such school. It shall be the duty of the *superintendent* to recall and return to the school any girl who is not conducting herself properly, or who may not have a suitable home, and for such purpose such vocational school shall have sole custody and control over any girl so paroled until she shall have reached the age of twenty-one (21) years, or until she shall be finally discharged."

Recall to vocational school for cause—custody.

Amending clause.

Section 69. Section 10-101, R. C. M. 1947, is amended to read as follows:

Montana children's center established—purpose.

"Section 10-101. **Establishment of home.** There is hereby established, to be located and permanently maintained at or within one mile of the town of Twin Bridges, in the county of Madison, a *"Montana Children's Center"* for the support and care of orphans, foundlings, and destitute children resident within the state of Montana."

Amending clause.

Section 70. Section 10-105, R. C. M. 1947, is amended to read as follows:

Qualifications of superintendent as administrative head of center.

"Section 10-105. **Qualifications and powers of superintendent.** The superintendent of the *Montana Children's Center, who is the administrative head of the Center,* shall be a person of acknowledged ability and fitness for his office, and shall sustain a good moral character."

Amending clause.

Section 71. Section 10-110, R. C. M. 1947, is amended to read as follows:

Right given inmates of center, industrial school, vocational school to free education at university and high schools, other training.

"Section 10-110. **Free education of inmates of** *children's center,* **industrial school and girls' vocational school at university of Montana.** Any inmate of the Montana *children's center,* the state industrial school, or the state vocational school for girls, who, shall have completed the course of study of any of said institutions and shall have shown evidence of studious and industrious habits, shall be entitled upon the recommendation of the superintendent of any of said institutions, *and the department of public insti-*



HeinOnline -- 1963 vol. II 1150 1963

*tutions,* to receive free education at the expense of the state for a period not to exceed four (4) years, at any unit of the university of Montana, and shall likewise be entitled to receive at the expense of the state the necessary high school or other training, if any be needed, to enable such student to enter any of the institutions of higher learning herein mentioned."

Amending clause.

Section 72. Section 10-112, R. C. M. 1947, is amended to read as follows:

"Section 10-112. **Record to be kept of habits and scholarship of inmates—selection of students.** It shall be the duty of the *superintendents* of each of the respective institutions enumerated in section 10-110 of this code to keep a record of the habits and scholarship of all inmates of said institutions, and said *superintendents* shall annually on or before the first day of August of each year, certify to the state board of education the names of all inmates of said institutions designated as eligible to the free education provided for in this act. Not more than two (2) persons per year from each of the institutions enumerated in section 10-110 of this code shall be designated as eligible to the benefits of this act. Said *superintendents* shall fairly and impartially select from their respective institutions the two (2) inmates thereof as eligible to the free education provided for by this act."

Duty of superintendents to keep records—habits and scholarship of inmates.

Selection for free education.

Amending clause.

Section 73. Section 10-113, R .C. M. 1947, is amended to read as follows:

"Section 10-113. *Department of public institutions* **to designate institution inmate to attend.** The *department of public institutions* shall designate the educational institution to which each student shall be sent, including the designation of the high school or other preparatory school; provided, however, that in all cases persons eligible to the benefits of this act must first complete the course of study given in the institution to which they have been committed and must, so far as possible, fit themselves, while at said institutions for the higher education herein provided for."

Department shall select school.

Amending clause.

Section 74. Section 10-114, R. C. M. 1947, is amended to read as follows:

"Section 10-114. **Inmates attending university remain**



HeinOnline -- 1963 vol. II 1151 1963

Inmates attending school remain subject to control of institution.

**subject to control of institution from which sent.** Any inmate of the several institutions mentioned in section 10-110 of this code, while attending high school, college, or any other educational institution mentioned in this act, shall remain subject to the control of the institution to which such person was committed and said *institution* shall have the authority to discontinue the free education of any such student for violation of any of the regulations of such institution or whenever, in the judgment of *the superintendent of the institution,* the character, habits, or scholarship of said students are such that he or she no longer merits the benefits of this act."

Amending clause.

Section 75. Section 10-118, R. C. M. 1947, is amended to read as follows:

Procedure for admission to children's center.

"Section 10-118. **Application for admission.** When it is desired to place any child in *the Montana children's center,* application shall first be made to the judge of the district court, and said court shall require the *county board of public welfare,* to make a full and complete investigation of said application and the facts and circumstances relating thereto, and to present such facts with a petition for admission to *the Montana children's center* to the said judge, in whom shall be vested the authority to make commitment."

Amending clause.

Section 76. Section 10-120, R. C. M. 1947, is amended to read as follows:

Authority to discharge child from center.

"Section 10-120. **Age limit.** After any child shall have reached the age of sixteen years, the *superintendent, with the consent of the department of public institutions,* may discharge him from the *center* or return him to the county from whence he came; having always in mind due regard for his welfare in so doing."

Amending clause.

Section 77. Section 10-121, R. C. M. 1947, is amended to read as follows:

Procedure for commitment from center to industrial or vocational school for cause.

"Section 10-121. **Incorrigible children.** Whenever any child, an inmate of the *children's center,* shall be incorrigible, or shall by continuous vicious or immoral conduct be a menace to the welfare of the other wards of the home, the superintendent, under the direction of the *department of public institutions,* shall make complaint to the county attorney, who shall thereupon bring proceedings



HeinOnline -- 1963 vol. II 1152 1963

in the district court against such accused child, and if in the opinion of the district judge such charges are sustained by competent evidence, he shall order the accused committed to the Montana state industrial school *or vocational school for girls.* The provisions of section 80-801 to 80-827, relating to the state industrial school, shall be applicable to this section."

Amending clause.

Section 78. Section 75-301, R. C. M. 1947, is amended to read as follows:

General control of university units and state school for deaf and blind vested in board of education.

"Section 75-301. **General control of state institutions.** The general control and supervision of the Montana state university, Montana state college, Montana school of mines, *western Montana college of education,* eastern Montana *college of education* and northern Montana college, all being units of the university of Montana, and Montana state school for the deaf and blind are vested in the state board of education."

Amending clause.

Section 79. Section 75-302, R. C. M. 1947, is amended to read as follows:

Executive board—state schools—appointment—qualifications—powers.

"Section 75-302. **Local executive boards — creation, residence and powers.** There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, all of whom shall be appointed by the governor, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board."

Amending clause.

Section 80. Section 75-303, R. C. M. 1947, is amended to read as follows:

Board shall elect officers.

"Section 75-303. **Officers — bond of treasurer.** The board shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board.

Treasurer's bond.

The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond



HeinOnline -- 1963 vol. II 1153 1963

with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners."

Duties.

Amending clause.

Section 81. Section 80-1101, R. C. M. 1947, is amended to read as follows:

"Section 80-1101. **Lease of land for production of crops and livestock for use at certain state institutions.** The state *department of public institutions* is hereby authorized to enter into leases for, leases with the option to purchase, and to purchase lands, buildings, machinery and improvements upon such terms and conditions as *are* for the best interest of the state for use at the state hospital, the state *tuberculosis* sanitarium, the state industrial school, *the state training school and hospital,* and the state *prison* at Deer Lodge for the production of crops and livestock for use at said institutions."

Authority to lease for production of crops and livestock for use at state institutions.

Repealing clause.

Section 82. Sections 80-301, 80-304, 80-305, 80-306, 80-307, 80-309, 80-312, 80-314, 80-315, 80-317, 80-318, 80-319, 80-321, 80-322, 38-103, 38-105, 38-106, 38-111, 38-702, 38-901, 38-902, 80-706, 80-716, 80-717, 80-718, 80-735, 80-736, 80-737, 80-744, 80-747, 80-749, 80-202, 80-203, 80-204, 80-205, 80-208, 80-214, 80-216, 80-217, 38-801, 38-803, 38-817, 38-818, 80-801, 80-802, 80-803, 80-804, 80-805, 80-805.1, 80-808, 80-810, 80-812, 80-813, 80-814, 80-825, 80-826, 80-827, 80-901, 80-904, 80-906, 80-907, 80-908, 80-909, 80-910, 80-812, 80-913, 80-914, 80-916, 80-917, 80-930, 10-103, 10-104, 10-106, 10-107, 10-108, 10-109, 10-115, 10-116, 10-117, and 75-312, R. C. M. 1947, are repealed.

Severability.

Section 83. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-



HeinOnline -- 1963 vol. II 1154 1963

tions, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 14, 1963.

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## CHAPTER NO. 267

An Act Making Certain Changes in the General Administration of Providing for the Equalization of Financial Distribution for all Elementary and Secondary Schools in Order to Maintain a Uniform System of Free Public Schools by Amending Sections 75-1713.1, 75-1723, 75-1816, 75-3611, 75-3612, 75-3616, 75-3617, 75-3618, 75-3619, 75-3706, 75-3722, 75-3801, 75-4230, 75-4516.1 and 75-4518.1, R. C. M. 1947, Relating to Changes in Budget by Budget Board When in Excess of Foundation Program—Restrictions on Budgets, Fixing Tax Levy, Determination of Levy in Joint School Districts, Definitions—Schedules of Financial Program, Foundation Program, Distribution of Funds —Reports May be Required, Application for Approval as Isolated Schools, Distribution of Money Available to School Districts—Formula for Apportionment of County Funds, Formula for Distribution of State Funds, Common School Levy, Duties of County Treasurer, District School Taxes—Election, Attendance Outside of County of Pupil's Residence, Levy of Taxes, Reduction in Budget by Budget Board—Allowance of Additional Expenses Over Foundation Program; and by Repealing Sections 75-4507, 75-4508, 75-4509, and 75-4510, R. C. M. 1947, Relating to State Superintendent to Give Notice if State Fund Inadequate, Resolution to Issue Warrants—Hearing, Authorization to Issue Warrants, Method of Payment of Warrants, Increase of Budgets for High Schools—When Authorized, Special Tax Levy—Rate, Application of Act and Construction of Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 75-1713.1, R. C. M. 1947, is amended to read as follows: Amending clause.

"75-1713.1 If the total amount of the proposed elementary general fund expenses in the preliminary Preliminary budget shall equal foundation program.



HeinOnline -- 1963 vol. II 1155 1963

budget of any district shall exceed the foundation program of such district, the budget board shall, in the manner and subject to the limitations prescribed by section 75-1713, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district and shall not in any manner increase the amounts to be apportioned hereunder from the county common school levy or from the *moneys available for state equalization aid;* and provided, that, except in the case of the existence of the emergencies specified in section 75-1716, the entire amount of such additional expense over the foundation program *plus the foundation program to be included in the budget of any district shall not be greater than the maximum amounts in accordance with the following schedules:* provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

Exceptions—special circumstances.

Payment of excess expense.

Limitation on amount of additional expense.

Schedules of maximum amounts—elementary schools.

*Elementary Schools*

*(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be fifty-three hundred twelve dollars ($5,312.00), if said school is approved as an isolated school; if said school is not approved as an isolated school, then the maximum shall be twenty-six hundred fifty-six dollars ($2,656.00).*

*(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be fifty-three hundred twelve dollars ($5,312.00) plus one hundred fifty-six dollars ($156.00) per pupil on the basis of the average number belonging over nine (9).*

*(3) For schools with an ANB of eighteen (18) pupils and employing one teacher, the maximum shall be sixty-seven hundred sixteen dollars ($6,716.00) plus sixty-two dollars and fifty cents ($62.50) per pupil on the basis of*



HeinOnline -- 1963 vol. II 1156 1963

*the average number belonging over eighteen (18), not to exceed an ANB over twenty-five (25).*

*(4) For schools with an ANB of eighteen (18) pupils and employing two full-time teachers, the maximum shall be twelve thousand sixty-two dollars ($12,062.00) plus sixty-two dollars and fifty cents ($62.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over fifty (50).*

*(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:*

*For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of four hundred twenty-five dollars ($425.00) shall be decreased at the rate of thirty-two cents ($0.32) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of four hundred six dollars (406.00) shall be decreased at the rate of thirty-eight cents ($0.38) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed three hundred thirty dollars ($330.00) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.*

Computation.

*The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.*

State superintendent shall submit revised schedule—basis.

*On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the Legislative Assembly of the State of Montana a revised schedule for elementary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for*



HeinOnline -- 1963 vol. II 1157 1963

*each classification of elementary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom.*

Amending clause.

Section 2. Section 75-1723, R. C. M. 1947, is amended to read as follows:

Duty of county superintendent—elementary school budgets.

"75-1723. The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board.

Duty of commissioners to fix and levy taxes to cover school budget.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed *the maximum budgets set forth in Section 75-1713.1, R. C. M. 1947.*"

Amending clause.

Section 3. Section 75-1816, R. C. M. 1947, is amended to read as follows:

Duty of school trustees to prepare preliminary budget.

"75-1816. The board of school trustees of each joint school district shall consider, prepare and adopt a preliminary budget according to the provisions of section 75-1706, provided that a copy of such budget shall be transmitted to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each said fund, in the manner herein

Determination of necessary millage.



HeinOnline -- 1963 vol. II 1158 1963

provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

The number of mills to be levied on all of the property of such joint district for each tax-supported fund shall be determined in accordance with the general laws pertaining to tax levies for school districts, provided that the following exceptions to general financing procedures shall be made: Exceptions.

(a) In the general fund budget and solely for the purpose of determining the amounts of county equalization aid to be allocated to the joint district for its foundation program, the total foundation program amount of the joint district shall be considered as consisting of as many separate foundation programs as there are counties in which any portion of the joint district is situated. The amount of each such separate foundation program shall bear to the total amount of the foundation program the same relationship that the number of ANB pupils in the joint district residing in each such county bears to the total ANB of the joint district. To the requirements of each such separate foundation program shall be applied the estimated state interest and income payment based on the number of census pupils in such portion. The amount of county equalization aid to be allocated to such separate foundation program shall then be determined in accordance with the provisions of section 75-3618. Following the determination of the amount of county equalization aid from each county in which any portion of the joint district is situated, the total remaining requirements of the general fund budget shall be financed in accordance with the general laws, provided that, to receive state equalization aid, such joint district must apply to its foundation program all district revenue from the state permanent school fund.



HeinOnline -- 1963 vol. II 1159 1963

(b) In the transportation fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the amount of county reimbursement for elementary transportation to be allocated to the joint district, the obligation for the total amount of such county reimbursement shall be distributed among such counties in the same proportion as the ANB of the joint district is distributed by residence in each such county."

Amending clause.

Section 4. Section 75-3611, R. C. M. 1947, is amended to read as follows:

Definitions: "Average number belonging."

"75-3611. **Definitions—schedules of financial program.** The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending a public school, or attending public schools in a school district as a whole, which average number shall be computed by dividing the sum of the aggregate days of attendance by regularly enrolled pupils and the aggregate days of absence by regularly enrolled pupils during the last completed school year, by the number one hundred eighty (180); provided that attendance for a part of a morning session or part of an afternoon session shall be counted as one-half (½) day's attendance in either case, and provided further, when any regularly enrolled pupil has been absent, with or without excuse, for more than three (3) consecutive school days in such school year, his absence after the third day and until his return to school shall not be included in the aggregate days of absence. The average number belonging of secondary pupils of a school district or of elementary pupils of a school district does not include the pupils of any high school or of any elementary school which has not been accredited by the state board of education. Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated.

Authority to reopen school.

Any school district may reopen a school which was not in operation the previous year, which such reopening is approved by the county budget board and the state superintendent of public instruction, and when the



HeinOnline -- 1963 vol. II 1160 1963

county superintendent estimates the probable enrollment for such school to be at least five (5), and the parents of at least three (3) of these five (5) children petition for such reopening; such approved reopened school shall be eligible for county and state aid on its foundation program. Any school district which opens a new school shall comply with at least the minimum requirements for reopening a closed school as herein provided, and no foundation program shall be established for any new school not meeting the minimum requirements for opening.

Anticipated ANB—increase for budget purposes.

Should a school district anticipate an increase in ANB, above the normal state-wide increase of the past year, due to the closing of any private or public school in the district or in neighboring districts, such district shall be allowed an increase in ANB for budget purposes, based on an estimate arrived at by the district superintendent, board and county superintendent and approved by the state superintendent.

"Minimum foundation program."

The terms, "minimum foundation program" and "foundation program," shall mean the amount required to operate and maintain an adequate and efficient school, as fixed and established by the schedules of minimum operating revenues set forth in section 75-3612.

"Isolated school."

"Isolated high school."

The term "isolated school," shall mean an elementary school having an ANB of *nine (9)* or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617; and the term, "isolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617.

"Nonisolated school."

The term, "nonisolated school," shall mean an elementary school having an ANB of less than *ten (10)* pupils, which has not been approved as an isolated school; and the term, "nonisolated high school," shall mean a high school having an ANB of *twenty-four (24) or less* pupils, which has not been approved as an isolated high school."

Amending clause.

Section 5. Section 75-3612, R. C. M. 1947, is amended to read as follows:



HeinOnline -- 1963 vol. II 1161 1963

Apportionment of moneys—state equalization aid.

"75-3612. The moneys *available for state equalization aid* shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt *retirement,* and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

Foundation program—75% of maximum budget.

Elementary Schools

*The foundation program shall be seventy-five per cent (75%) of the maximum budget as set forth in Section 75-1713.1, R. C. M. 1947.*

High Schools

*The foundation program shall be seventy-five per cent (75%) of the maximum budget as set forth in Section 75-4518.1, R. C. M. 1947."*

Amending clause.

Section 6. Section 75-3616, R. C. M. 1947, is amended to read as follows:

Order of disbursement.

"75-3616. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements *of state equalization aid* within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to maintain the foundation financial program after receipt by it of its apportioned share from the permanent school fund of the state, from other constitutional sources, if any, *and from* the *basic* county levies provided for by *section 75-3706 and section 75-4516.1.*

Payment by state warrant.

Each order of the state board of education for disbursements of *state equalization aid,* shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order."



HeinOnline -- 1963 vol. II 1162 1963

Section 7. Section 75-3617, R. C. M. 1947, is amended to read as follows: Amending clause.

"75-3617. Before any elementary school having an ANB of *nine (9)* or less may be approved as an isolated school, and before any high school having an ANB of twenty-four (24) or less may be approved as an isolated high school, the board of trustees of the district wherein said school is located shall, on or before the first day of May in each year, make written application to the budget board for such approval. Such application shall be acted upon on or before the fifteenth day of June, and such application shall be granted if transportation of the pupils of such school to another school is impractical by reason of existence of obstacles to travel, such as mountains, rivers, poor roads, distance of pupils' homes from county roads or highways, or the distance of such isolated school from the nearest open school having room and facilities for the pupils of such isolated school *or other conditions resulting in unusual hardship to the pupils, such school shall* be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state *board of education,* and if none of the above mentioned circumstances exist, such application shall be denied." Application for approval as isolated school. Conditions—finding and determination.

Section 8. Section 75-3618, R. C. M. 1947, is amended to read as follows: Amending clause.

"75-3618. **Distribution of money available to districts—formula for apportionment of county funds.** After the deduction of transportation reimbursements provided by law, the proceeds of the *basic* county *twenty-five (25)* mill common school levy *as provided for in section 75-3706* and the proceeds of the *basic* special tax for high schools, *as provided for in section 75-4516.1* shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such *basic* county levy when added to all other funds available to the respective districts from the permanent school fund, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, Distribution of other school moneys. Separate distribution.



HeinOnline -- 1963 vol. II 1163 1963

the proceeds of the *basic* county common school levy and the proceeds of the *basic* county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after county and state equalization aid have been received:

Cash balances used to reduce levies on district for general fund.

Formula.

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the *basic* county levy) bears to the total costs of the foundation program for all such districts.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the *basic* county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of *such* county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the *basic* county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the *basic* county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

5. No district school shall be deprived of its needful share of either county levy by reason of it being non-accredited.

6. No territory situated within the county shall be excluded from the distribution of the school funds of the county solely because such territory lies within the boundaries of a joint district."



HeinOnline -- 1963 vol. II 1164 1963

Section 9. Section 75-3619, R. C. M. 1947, is amended to read as follows: Amending clause.

"75-3619. **Formula for distribution of state funds.** Apportionment of equalization aid. At any time when the total requirements of the several counties of the state for *state equalization aid* in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:

*Provided that seventy per cent (70%) of State Equalization Aid shall be set aside for the common schools and thirty per cent (30%) of State Equalization aid shall be set aside for high schools, and provided further that such allocation shall not prevent a transfer of funds if revenues for the common schools shall be in excess of the foundation program requirement for common schools.* Conditions.

(1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available *for state equalization aid*) bears to the total cost of the foundation financial program in all counties. Formula.

(2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment *for state equalization aid*) bears to the cost of the foundation financial program of all school districts of the county.

(3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization funds but shall be excluded from further consideration under this section.

(4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program (including the total amount available *for state equalization aid*), bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds *for state equalization aid,* which, when added to all other funds available to such county in support of the foundation financial program, shall be



HeinOnline -- 1963 vol. II 1165 1963

sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county.

Distribution to respective elementary districts and high schools.

The county superintendent of schools shall distribute the funds received by such county from the state *for state equalization aid* to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state *for state equalization aid* the formula provided in section 75-3618 for the distribution of the proceeds of *basic* county levies."

Amending clause.

Section 10. Section 75-3706, R. C. M. 1947, is amended to read as follows:

Duty to levy annual basic tax in each county.

"75-3706. **Common school levy.** In addition to the provisions for the support of the common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual *basic* tax of *twenty-five (25)* mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a *basic* levy of less than *twenty-five (25)* mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser *basic* levy shall be made, but no school district within a county levying less than *the basic twenty-five (25)* mills shall receive any apportionment from the state public school equalization fund*; it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within each school district as shall be required to provide the foundation program for such school district.*

Additional tax—condition.

Additional school moneys.

For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for violations of law, unless otherwise specified by law. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxation."



HeinOnline -- 1963 vol. II 1166 1963

Amending clause.

Section 11. Section 75-3722, R. C. M. 1947, is amended to read as follows:

Duties of county treasurer.

"75-3722. **Duties of county treasurer.** It shall be the duty of the county treasurer of each county:

School moneys and accounts.

1. To receive and hold all school moneys and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent. A separate account shall be maintained for each fund supported by a county-wide levy for a specific, authorized purpose, including (1) the *basic* county *mill* levy for elementary schools *as provided in section 75-3706,* (2) the *basic special tax* for high schools *as provided in section 75-4516.1,* (3) the county levy for high school transportation as provided in section 75-3414, (4) the county levy for the high school retirement systems as provided in sections 68-603 and 75-2709, *and such other county levy as may be required.*

Statement of warrants.

2. To render quarterly, beginning September first, to each board of trustees, through its chairman, an itemized statement of warrants paid and moneys received for the district for the preceding quarter.

Notice of amount of county school funds.

3. To notify the county superintendent of public schools of the amount of county school funds in the county treasury subject to apportionment whenever required, and to inform said county superintendent of the amount of school moneys belonging to any other fund subject to apportionment.

Payment of warrants.

4. To pay all warrants drawn on county or district school moneys in accordance with the provisions of this chapter, whenever such warrants are countersigned by the district clerk and also countersigned by the county superintendent as provided in section 75-1640.

Separate funds.

5. To keep in a separate fund the proceeds of any levy made to cover expenses of schools for any part of the succeeding school year and no warrants shall be paid out of said funds for the preceding school year either before or after the fund is transferred. At the beginning of the school year for which the fund is raised it shall be transferred to the general fund of the district.

Interest and penalties.

6. To receive all interests and penalties on all delin-



HeinOnline -- 1963 vol. II 1167 1963

quent school taxes and credit the same to the fund and district for which the original taxes were levied.

Accounts—each of school budget funds.

7. To keep for each school district, separately for elementary and high schools, and for each county high school, a separate, detailed account of the receipts, disbursements and cash balances for each of the several regular funds of the school budget for which a tax levy is ordinarily made.

Accounts—each nonbudgeted fund.

8. To keep for each school district, separately for elementary and high schools, and for each county high school, a separate, detailed account of the receipts, disbursements and cash balances for each special, nonbudgeted fund supported by nontax revenues, including (a) the self-supporting school lunch fund, (b) miscellaneous federal funds for special purposes including vocational education and the National Defense Education Act, (c) the building fund, (d) the adult education fund when nontax supported, (e) the self-supporting housing and dormitory fund and (f) any other special fund required by the trustees.''

Amending clause.

Section 12. Section 75-3801, R. C. M. 1947, is amended to read as follows:

''75-3801. **District school taxes—election.**

Additional district school taxes—election.

(1) Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the levy required to meet its *maximum budgets as specified in section 75-1713.1,* for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the *maximum budgets* hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the



HeinOnline -- 1963 vol. II 1168 1963

board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

Additional high school taxes—election.

(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its *maximum budgets as specified in section 75-4518.1* for the purpose of maintaining the high schools of said district or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).''



HeinOnline -- 1963 vol. II 1169 1963

Amending clause.

Section 13. Section 75-4230, R. C. M. 1947, is amended to read as follows:

Attendance at high school outside county of residence—authorization.

"75-4230. The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of an adjoining county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the county of the student's residence.

Application.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Duty of clerk.



HeinOnline -- 1963 vol. II 1170 1963

Tuition—county of residence—transfer budget.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by two hundred fifty dollars ($250.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred twenty-five dollars ($225.00) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred dollars ($200.00) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

Determination.

Total transfer budget subtracted.

The total of the transfer budget shall be subtracted from the receipts from the *basic special tax* for high schools *as provided for in section 75-4516.1* before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

Transfer of moneys.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Tuition paid high school for inmates of children's center.

Whenever pupils are inmates of the Montana state orphans' home at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall *receive from moneys available for state equalization aid four hundred dollars ($400.00)* for each such pupil; provided, however, that this amount of tuition is not considered as



HeinOnline -- 1963 vol. II 1171 1963

a part of *regular* state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Reciprocity—attendance outside state.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis."

Amending clause.

Section 14. Section 75-4516.1, R. C. M. 1947, is amended to read as follows:

Duty to levy—basic high school levy.

*"75-4516.1 Levy of taxes. (1) Basic high school levy. On or before the first day of August in each year, the state superintendent of public instruction shall compute and determine the sum of money which, when added to the moneys available for the state equalization aid shall provide seventy-five per cent (75%) of the maximum high school budgets for all high schools as set forth in sections 75-4518.1 and 75-3612, plus the amount of high school tuition. Such information shall be given to the state board of equalization who shall compute and determine the number of mills of a tax (herein called the basic high school tax) on the taxable value of all property within all the counties of the state which is calculated to produce the aforesaid sum of money.*

Determination of basic high school tax.

Adjusted basic high school tax.

*If a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets of all school districts within one or more counties, the state board of equalization shall recompute the basic high school tax to be levied in the remaining counties, excluding in the computations the amount of the foundation programs in the county or counties requiring a lesser levy, thus determining as the adjusted basic high school tax the number of mills required to produce the sum of money which, when added to all*



HeinOnline -- 1963 vol. II 1172 1963

*the moneys available for state equalization aid to be distributed to all high schools except those which as hereinafter provided are not entitled to apportionment of state equalization aid, shall equal the total of the foundation programs of all high schools except those not entitled to apportionment of state equalization aid. In no event shall the adjusted basic high school tax exceed fifteen (15) mills.*

Limitation.

*In addition to the provisions for the support of the high schools hereinbefore provided, it shall be the duty of the board of county commissioners of each county in the state to levy on the taxable valuation of all taxable property in the county the number of mills determined by the board of equalization as the adjusted basic high school tax, except that the board in any county in which a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets for all high schools within the county shall levy such lesser number of mills.*

Duty of county to levy.

*The levy in each county shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, and the tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected.*

Time and manner of levy.

*No county levying less than the adjusted basic high school levy shall receive any apportionment of state equalization aid.*

Limitation—state aid.

*(2) Additional high school levy. The county commissioners shall, if necessary, levy an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts and county high schools within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district and county high school within the county after apportionment of the basic special tax for high schools as provided in Section 75-3618 and the state public school equalization funds as provided in Section 75-3619.*

Additional high school levy.

*(3) Permissive high school levy.* If the revenues for the operation and maintenance of any high school, including the amount apportionable from said *basic special tax*

Permissive high school levy.



HeinOnline -- 1963 vol. II 1173 1963

*for high schools and the amount, if any, produced by said additional high school tax,* shall be less than the foundation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, *be used to raise funds in excess of the maximum budgets as specified in Section 75-4518.1 when considered with all other sources of revenue, unless approved by a vote of the taxpaying electors.''*

Limitation.

Amending clause.

Section 15. Section 75-4518.1, R. C. M. 1947, is amended to read as follows:

''75-4518.1. **Reduction in budget by budget board—allowance of additional expenses over foundation program.** If the total amount of the proposed general fund expenses in the preliminary budget of any district or county high school shall exceed the foundation program thereof, the budget board shall, in the manner provided by section 75-4518, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district or county high school shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the allowance of such excess expense over the foundation

Reduction of proposed general fund expenses—conditions—limitations.



HeinOnline -- 1963 vol. II 1174 1963

program shall not in any manner increase the amounts *of state equalization aid* to be apportioned hereunder; and provided that, except in the case of the existence of the emergencies specified in section 75-4521, the entire amount of such additional expense over the foundation program to be included in any high school budget including any reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year, *plus the foundation program shall not be greater than the maximum amounts in accordance with the following schedules, provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.*

*High Schools*

Schedule of maximums—high schools

*(1) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be twenty-five thousand five hundred dollars ($25,500.00).*

*(2) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum ten hundred sixty-two dollars ($1,062.00) shall be decreased at the rate of seven dollars ($7.00) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of nine hundred fifty dollars ($950.00) shall be decreased at the rate of four dollars and seventy-five cents ($4.75) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of six hundred sixty-five dollars ($665.00) shall be decreased at the rate of one dollar and fifty-five cents ($1.55) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of five hundred ten dollars ($510.00) shall be decreased by thirty-five cents ($0.35) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300)*



HeinOnline -- 1963 vol. II 1175 1963

*pupils, the maximum of four hundred seventy-five dollars ($475.00) shall be decreased at the rate of nine cents ($0.09) until the ANB shall have reached six hundred (600) pupils. Schools having an ANB in excess of six hundred (600) pupils shall receive four hundred forty-eight dollars ($448.00) per pupil.*

Computation.

*The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.*

*In computing the amount for the foundation program and the maximum program only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.*

Duty of state superintendent—revised schedule for secondary schools.

*On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the Legislative Assembly of the State of Montana a revised schedule for secondary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of secondary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom."*

Repealing clause.

Section 16. Sections 75-4507, 75-4508, 75-4509, and 75-4510 are repealed.

Repealing clause.

Section 17. All acts and parts of acts in conflict herewith are hereby repealed.

Effective March 15, 1963.

Section 18. This act shall be in full force and effect from and after the fifteenth day of March, 1963.

Approved March 15, 1963.

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## CHAPTER NO. 268

An Act to Amend Section 4-104, R. C. M., 1947, Pertaining to the Creation, Qualifications and Term of the Montana Liquor Control Board; Providing For a Five



HeinOnline -- 1963 vol. II 1176 1963

(5) Member Board; Prviding for Removal of Members by the Governor; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Section 4-104, R. C. M., 1947, as amended, is amended to read as follows: Amending clause.

"4-104. **Montana liquor control board—creation—qualifications—term.** The "Montana Liquor Control Board" shall consist of *five (5)* members not more than *three (3)* of whom shall be *of* the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five (5) years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four (4) years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one (1) of such members shall be appointed to hold office for a term of two (2) years, and two (2) of such members shall be appointed to hold office for a term of four (4) years, *and the two (2) additional members of said Board provided under the terms of this act shall be appointed to hold office for a term of four (4) years;* and provided, further, that the members of said Board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one (1) shall end March 1, 1939, and the term of two (2) shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four (4) years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature. next preceding the commencement of the term for which the appointment is made."

Montana liquor control board—five members—appointment—qualifications.

Term of office.

Removal for cause.

Section 2. This act shall be in full force and effect from and after its passage and approval. Effective immediately.

Approved March 15, 1963.



HeinOnline -- 1963 vol. II 1177 1963

## CHAPTER NO. 269

An Act to Amend Sections 87-103, 87-106, and 87-109, R. C. M. 1947, Which Sections Are a Part of the Unemployment Compensation Law; by Providing That a Claimant With High Quarter Wages of $1282.50 Must Have Wages of $100 in a Quarter Other Than His High Quarter; Increasing From One to Two Weeks the Minimum Disqualification For Benefits; Providing That Average Annual Employer Tax Rates Shall Increase to 2.0 Per Centum or to 2.7 Per Centum if Trust Fund Balance Remains Below $18,000,000 Continuously for One Year or for Two Years, Respectively; And Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 87-103, R. C. M. 1947, is amended to read as follows:

"87-103. **Benefits.**

Payment of unemployment benefits.

(a) Payment of benefits. Thirty (30) months after the date when contributions first accrue under this act from the employer, benefits shall become payable from the fund to any individual, who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the railroad unemployment insurance act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions of this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the commission, in accordance with such rules and regulations as the commission may prescribe.

Exceptions.

Weekly benefit amount.

(b) Weekly benefit amount. Except as provided in subsection (c), an insured worker's weekly benefit amount shall be the amount in column B of the benefit schedule of this subsection on the line on which in column A



HeinOnline -- 1963 vol. II 1178 1963

there appears his total wages paid for insured work in that quarter of his base period in which his wages were highest: (designated in the benefit schedule as 'High Quarter Wages'.)

## BENEFIT SCHEDULE

Weekly benefit amount figures from weighted schedule of high-quarter wages and qualifying wages computed as one and one-half times high-quarter wages and maximum potential benefits in benefit year. Benefit schedule

| High-Quarter Wages (Col. A) | Weekly Benefit Amount (Col. B) | Minimum Qualifying Wages (Col. C) |
|---|---|---|
| $285.00-314.99 | $15.00 | $427.50 |
| 315.00-344.99 | 16.00 | 472.50 |
| 345.00-374.99 | 17.00 | 517.50 |
| 375.00-404.99 | 18.00 | 562.50 |
| 405.00-434.99 | 19.00 | 607.50 |
| 435.00-464.99 | 20.00 | 652.50 |
| 465.00-494.99 | 21.00 | 697.50 |
| 495.00-524.99 | 22.00 | 742.50 |
| 525.00-554.99 | 23.00 | 787.50 |
| 555.00-584.99 | 24.00 | 832.50 |
| 585.00-614.99 | 25.00 | 877.50 |
| 615.00-644.99 | 26.00 | 922.50 |
| 645.00-674.99 | 27.00 | 967.50 |
| 675.00-704.99 | 28.00 | 1,012.50 |
| 705.00-734.99 | 29.00 | 1,057.50 |
| 735.00-764.99 | 30.00 | 1,102.50 |
| 765.00-794.99 | 31.00 | 1,147.50 |
| 795.00-824.99 | 32.00 | 1,192.50 |
| 825.00-854.99 | 33.00 | 1,237.50 |
| 855.00 or more | 34.00 | 1,282.50 |

| Maximum Total Benefits at 13 Weeks (Col. D) | Maximum Total Benefits at 20 Weeks (Col. E) | Maximum Total Benefits at 26 Weeks (Col. F) |
|---|---|---|
| $195.00 | $300.00 | $390.00 |
| 208.00 | 320.00 | 416.00 |
| 221.00 | 340.00 | 442.00 |



HeinOnline -- 1963 vol. II 1179 1963

| | | |
|---|---|---|
| 234.00 | 360.00 | 468.00 |
| 247.00 | 380.00 | 494.00 |
| 260.00 | 400.00 | 520.00 |
| 273.00 | 420.00 | 546.00 |
| 286.00 | 440.00 | 572.00 |
| 299.00 | 460.00 | 598.00 |
| 312.00 | 480.00 | 624.00 |
| 325.00 | 500.00 | 650.00 |
| 338.00 | 520.00 | 676.00 |
| 351.00 | 540.00 | 702.00 |
| 364.00 | 560.00 | 728.00 |
| 377.00 | 580.00 | 754.00 |
| 390.00 | 600.00 | 780.00 |
| 403.00 | 620.00 | 806.00 |
| 416.00 | 640.00 | 832.00 |
| 429.00 | 660.00 | 858.00 |
| 442.00 | 680.00 | 884.00 |

Limitations on amount.

Such benefit shall not be more than thirty-four ($34) dollars per week nor less than fifteen dollars ($15) per week.

Qualifying wages.

(c) **Qualifying Wages.** To qualify as an insured worker an individual must have been paid wages for insured work in his base period totaling not less than the amount in column C of the benefit schedule in subsection (b) on the line on which in column B there appears his weekly benefit amount*; provided that an individual who has high quarter wages of twelve hundred eighty-two dollars and fifty cents ($1,282.50) or more must have been paid wages of one hundred dollars ($100) or more for insured work in one (1) calendar quarter within his base period other than the quarter in which his wages were the highest.*

Wage records.

(d) **Wage record.** The commission shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

Accrued benefits—payment after death.

(e) **Benefits.** All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration.''



HeinOnline -- 1963 vol. II 1180 1963

Section 2. Section 87-106, R. C. M. 1947, is amended to read as follows: Amending clause.

"87-106. **Disqualification for benefits.** An individual shall be disqualified for benefits— Disqualification for benefits.

(a) If he has left work without good cause attributable to the employment for a period of not less than *two (2)* or more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the commission according to the circumstances in each case. No benefit payments or amounts paid any individual after having left work without good cause attributable to the employment shall ever be charged under section 87-109 against any employer (whose employment the individual left) on account of that particular employment. Leaving work without good cause.

(b) If he has been discharged: Discharge.

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than *two (2)* nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the the commission in each case according to the seriousness of the misconduct: Misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the commission, for a period of twelve (12) months. Gross misconduct.

No benefit payments or amounts paid any individual after having been discharged for misconduct shall ever be charged under section 87-109 against any employer (from whose employment the individual was discharged for misconduct as above provided) on account of that particular employment.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the commission or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than *two (2)* nor more than five (5) weeks in addition to the waiting week which immediately follow such week as determined by the commission according to the circumstances in each case. Failure to apply for work.



HeinOnline -- 1963 vol. II 1181 1963

Determination of suitable work.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Benefits shall not be denied—conditions.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

Labor dispute.

(A) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

Less favorable work conditions.

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

Labor organization.

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Stoppage of work.

(D) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

Nonparticipation.

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

Class of workers.

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Separate business.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the



HeinOnline -- 1963 vol. II 1182 1963

purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

Nonconformance of employer.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

Separation wages.

(2) Compensation for disability under the workmen's compensation law or the occupational disease law of this or any other state or under a similar law of the United States;

Disability compensation.

(3) Benefits under the railroad unemployment insurance act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Other unemployment benefits.

Receipt of any wages, compensation or benefits as set forth in subsections (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the commission may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

Repayment.

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

Student.

(g) For any week wherein claimant leaves her most recent work to be married. Such disqualification shall cancel all existing wage credits and shall continue until

Marriage.



HeinOnline -- 1963 vol. II 1183 1963

such time as subsequently to such week additional wage credits shall have been earned so as to be eligible for benefits under section 87-105.

Retirement.

(h) Where retired and entitled to receive retirement compensation paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under section 87-103 or 87-105, and no benefit payments or amounts paid any individual after such retirement shall ever be charged under section 87-109 against any employing unit from whose employment the individual is retired, on account of that particular employment, unless and until the commission shall determine (upon hearing, if requested by employer, and after at least ten (10) days' written notice of such hearing to said employer) that the individual was not retired by the employer acting in good faith. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

Pregnancy.

(i) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence

Childbirth.

of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of a certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the commission. No benefit payments or amounts paid any individual after having left work because of pregnancy or childbirth shall ever be charged under section 87-109 against the employer (whose employment the individual left because of pregnancy or because of childbirth) on account of that particular employment.



HeinOnline -- 1963 vol. II 1184 1963

(j) For any week wherein claimant leaves her most recent work to change her place of residence in order to remain with her husband or relative. Such disqualification shall cancel all existing wage credits and shall continue until such time as subsequently to such week additional wage credits shall have been earned so as to be eligible for benefits under section 87-105." Change of residence.

Section 3. Section 87-109, R. C. M. 1947, is amended to read as follows: Amending clause.

"87-109. **Contributions.** (a) Payment. (1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ. Contributions by employer—time for payment.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half (½) cent or more, in which case it shall be increased to one (1) cent. Fractions.

(b) Rate of contribution. Rate of contribution.

(1) Each employer shall pay contributions equal to the following percentages of wages, as defined in section 87-149(c) paid by him with respect to employment:

(A) One and eight-tenths (1.8) per centum with respect to employment during the calendar year 1937;

(B) Two and seven-tenths (2.7) per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941, and for each calendar year thereafter, except as herein provided in subsection (c) of this section.

(c) **Experience rating.** The commission shall for the calendar year 1947, and for each calendar year thereafter, classify employers in accordence with their actual contribution and unemployment experience and shall determine for each employer the rate of contribution which Experience rating—form of classification.



HeinOnline -- 1963 vol. II 1185 1963

shall apply to him throughout the calendar year in order to reflect said experience and classification.

The commission shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

The commission shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of empoyment. (Sic.)

Factors.

In making such classification, the commission shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in taxable payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30th of the preceding calendar year.

The rates for the third calendar quarter of calendar year 1961 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equalling approximately one and five-tenths (1.5) per centum of the total of all such payrolls.

Limitations.

The commission shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be two and seven-tenths (2.7) per centum unless and until there have been five (5) years prior to the computation rate throughout which the employer has paid contributions at the rate of two and seven-tenths (2.7) per centum.

(2) The classified contribution rates for the calendar year 1947, and thereafter, except as hereinafter provided, shall be: one (1.0) per centum, one and one-half (1.5)



HeinOnline -- 1963 vol. II 1186 1963

per centum, two (2.0) per centum, two and one-half (2.5) per centum, and two and seven-tenths (2.7) per centum. The classified contribution rates for the calendar year 1953, and thereafter, except as hereinafter provided, shall be: five-tenths (.5) of one per centum, seven-tenths (.7) of one per centum, nine-tenths (.9) of one per centum, one and one-tenth (1.1) per centum, one and three-tenths (1.3) per centum, one and five-tenths (1.5) per centum, one and seven-tenths (1.7) per centum, one and nine-tenths (1.9) per centum, two and one-tenth (2.1) per centum, two and three-tenths (2.3) per centum, two and five-tenths (2.5) per centum, and two and seven-tenths (2.7) per centum.

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except for the year 1961 and further as hereinafter provided.

(4) No employer's rate shall be fixed below two and seven-tenths (2.7) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contributions for those years, provided that for the calendar year 1957 and thereafter, any employer may, for the purpose of avoiding the provisions of this subsection, have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the commission shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contri-



HeinOnline -- 1963 vol. II 1187 1963

bution allowed by this section within thirty (30) days after receipt of such notice; otherwise his rate for the ensuing calendar year shall be fixed at two and seven-tenths (2.7) per centum.

Minimum reserves—rate change.

(5) Rates as fixed by the commission shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below, *and remain below, eighteen million dollars ($18,000,000.00) continuously for a period of one (1) year*, then employer rates effective at the beginning of the next succeeding calendar quarter shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equalling approximately two (2) per centum of the total of all such payrolls, and shall continue at the two (2) per centum average rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars ($26,000,000.00) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths (1.5) per centum as in this section hereinabove provided; if *reserves remain below eighteen million dollars ($18,000,000.00) continuously for a period of two (2) years*, then the contribution rate of all employers subject to this act shall return to a uniform rate of two and seven-tenths (2.7) per centum *effective at the beginning of the next succeeding calendar quarter*, and shall continue at the two and seven-tenths (2.7) per centum rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars ($26,000,000.00) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths (1.5) per centum as in this section hereinabove provided.

Commission shall adopt procedures.

(6) The commission shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquistion of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

Provision for notification.

(7) The commission shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and



HeinOnline -- 1963 vol. II 1188 1963

until such employer files a written request with the commission for a redetermination or hearing thereon within thirty (30) days after receipt of such notice. The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder.

"Annual taxable payroll" defined.

(8) 'Annual taxable pay roll' means the total of the four (4) quarters of taxable pay rolls of an employer preceding the computation date as fixed herein.

Limit on wages paid.

(d) **Wages in excess of three thousand dollars ($3,000.00).** Commencing January 1, 1941, the provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars ($3,000.00) by an employer to an employee with respect to employment during any calendar year."

Amending clause.

Section 4. Section 87-149, R. C. M. 1947, is amended to read as follows:

Definitions.

"87-149. **Definitions.**—(continued) (a) Total unemployment:

"Totally unemployed."

(1) An individual shall be deemed 'totally unemployed' in any week during which he performed no services and with respect to which no wages are payable to him.

Week of employment.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

"Wages."

(3) As used in this subsection the term 'wages' shall include only that part of remuneration for work which is in excess of fifteen dollars ($15.00) in any one week and the term 'services' shall not include work for which remuneration equal to or less than fifteen dollars ($15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, whichever is greater.

"Unemployment compensation administration fund."

(b) 'Unemployment compensation administration fund', means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.



HeinOnline -- 1963 vol. II 1189 1963

"Wages." (c) 'Wages', means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission. Wage records kept by the commission for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the commission for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid. Provided, however, that the term 'wages' shall not include—

Exceptions.

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical and hospitalization expenses in connection with sickness or accident disability, or

(D) Death.

(E) Services performed for a fraternal benefit society, lodge, order, service club or association having a total annual payroll of less than five hundred dollars ($500.00) in any calendar year.

(F) Remuneration paid by any county welfare office from welfare assistance funds for services performed at the direction and request of such county welfare office.

"Week." (d) 'Week', means a period of seven (7) consecutive calendar days ending at midnight on Saturday.

"Weekly benefit amount." (e) 'Weekly benefit amount'. An individual's 'weekly benefit amount' means the amount of benefits he would be entitled to receive for one (1) week of total unemployment.

"Gross misconduct." (f) 'Gross misconduct', means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted *or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.''*



HeinOnline -- 1963 vol. II 1190 1963

Section 5. If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative. Severability.

Section 6. All acts or parts of acts in conflict herewith are hereby repealed. Repealing clause.

*Section 7. This act shall be in full force and effect upon passage and approval except that Section 1 shall apply to all benefit years beginning on and after April 7, 1963.* Effective date.

Approved March 15, 1963.

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## CHAPTER 270

An Act Providing for Payment of an Honorarium for Veterans of World War I From the Proceeds of Bonds to be Retired with Income From the Cigarette Tax; Amending Sections 3 and 17-A of Initiative No. 54 and Sections 84-5606 and 84-5621, R. C. M. 1947, and Repealing Sections 1, 2, and 12 of Initiative No. 54.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. There is added a new section 1 to Initiative No. 54 to read as follows: Enacting clause.

Section 1. As used in this law. Definitions:

(a) The term "World War I" means the period between April 6, 1917, and May 11, 1919, both dates inclusive; except that for those persons assigned to duty with the American Expeditionary Forces serving in Siberia, the term World War I includes the period between April 6, 1917, and April 1, 1920, both dates inclusive. "World War I."

(b) The term "military forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the construction battalions, all women's auxiliary corps, the nursing services, all air forces, and all other groups and "Military forces."



HeinOnline -- 1963 vol. II 1191 1963

services in and forming a part of the armed services under control and subject to the discipline of the war department or the navy department of the United States, and engaged in the prosecution of World War I.

"Military service." (c) The term "military service" means service on active duty by any person in any of the military forces at any time during World War I.

"Person." (d) The term "person" includes female as well as male.

"Serviceman." (e) The term "serviceman" means a person who is entitled to receive payments under section 2 of this law.

"Resident of Montana." (f) The term "resident of Montana" means a person, or the parents or surviving parent of a person, who was in military service and who at the time of his entry into such military service had his home in Montana. A person who, on April 6, 1917, was in military service and who at the time of his last entry into such service made his home in Montana shall be deemed a resident of Montana, unless he, after such last entry, and before entry into military service in such war, had established and was then maintaining a home in some other state.

"Continental limits of the united States." (g) The term "continental limits of the United States" means the area of the fifty (50) states and the District of Columbia, to high water mark on its water boundaries.

Section 2. There is added a new section 2 to Initiative No. 54 to read as follows:

Grant of honorarium to veterans of World War I. Section 2. (1) In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War I, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to each resident of Montana who was in military service an honorarium, or adjusted compensation, in the sum of ten dollars ($10) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars ($15) for each month and major fraction of a month for such service outside the continental limits of the United States.



HeinOnline -- 1963 vol. II 1192 1963

Limitation—grant from other state.

(2) There shall not be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in World War I, more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so recevied or to which he or she may be entitled from another such state or territory.

(3) No payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Amending clause.

Section 3. Section 3 of Initiative Measure No. 54 is amended to read as follows:

Payment in case of death.

"Section 3. In the case of the death of any such serviceman prior to payment under this law, *the amount to which he was entitled* shall be paid as follows:

Surviving spouse.

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

Minor children.

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to *any* child or children *under eighteen (18) years of age* who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

Parents.

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children *under eighteen (18) years of age,* then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

No payment to estates.

(4) The payments in this *section* provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person.



HeinOnline -- 1963 vol. II 1193 1963

Section 4. There is added a new section 12 to Initiative No. 54 to read as follows:

Authorizing limited obligation bonds.

Section 12. If the moneys derived from the issue of bonds authorized by section 12 of Initiative No. 54 as originally enacted and subsequently amended for the purpose of providing for the payment of the honorarium, or adjusted compensation to veterans of World War II and the Korean War and for paying the expenses of administration of this law shall be insufficient for the payment of the honorarium or adjusted compensation herein provided, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of two million five hundred thousand dollars ($2,500,000) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner provided for by this law. The bonds shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax provided for in this law and to apply the proceeds thereof to the retirement of all bonds issued hereunder, and the interest accruing thereon. The bonds shall draw interest at the rate of not more than four and one half per cent (4½%) per annum, payable semiannually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity, whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds. The board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semiannually, which shall be executed with facsimile signatures

Conditions.

Levy of cigarette tax.

Interest.

Powers of board.

Form of bonds.



HeinOnline -- 1963 vol. II 1194 1963

of all the members of said board of examiners. The signing of such coupons with facsimile signatures shall be recognized as sufficient execution of the coupons on behalf of the state of Montana.

Enacting clause.

Section 5. There is added a new section to Initiative No. 54 to be numbered section 14-B, to read as follows:

Deposit of bond proceeds.

Section 14-B. The money arising from the sale of such additional bonds in the amount of two million five hundred thousand dollars ($2,500,000) authorized by this amendatory act shall be deposited in the state treasury to the credit of the special fund created by Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in such fund, after payment of all claims allowed by the board of examiners under the provision of Initiative No. 54 as originally enacted and subsequently amended, shall, together with such additional funds as may be derived from the sale of bonds under the issue authorized by this amendatory act, be used to pay the honoraria granted by sections 2 and 3 of this act, and the expense of administration of this amendatory act.

Appropriation.

For the purpose of carrying out the provisions of this amendatory act there is appropriated from the War Veterans' Compensation Fund the moneys now remaining in the fund and not needed for the payment of the honoraria to persons who served in World War II or the Korean War, and the sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary to pay honoraria to the persons who served in the military forces in World War I.

Amending clause.

Section 6. Section 84-5606, R. C. M. 1947, is amended to read as follows:

Authorizing excise tax on cigarettes.

"Section 84-5606. **The tax.** Subdivision—(1) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Five cents (5¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.



HeinOnline -- 1963 vol. II 1195 1963

Additional excise tax on cigarettes.

Subdivision—(2) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (1) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, *the* Korean War, *or World War I.*

Additional excise tax on cigarettes.

Subdivision—(3) From and after the effective date of this amendatory act of the *thirty-eighth* legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (1) and (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of *the* thirty-fifth *and thirty-eighth* legislative *assemblies,* and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.



HeinOnline -- 1963 vol. II 1196 1963

Duty of distributor, dealer to affix tax insignia.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years."

Violations—penalties.

Amending clause.

Section 7. Section 84-5621, R. C. M. 1947, is amended to read as follows:

Employees.

"Section 84-5621. **Clerical and field assistants.** The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606 of the Montana Revised Codes of 1947, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and kept segregated from all money in the state treasury and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in *World War I* or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

Deposit of tax proceeds—use.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and be kept segregated from all other money in the state treasury and



HeinOnline -- 1963 vol. II 1197 1963

shall, while any of the bonds hereafter issued and sold, in addition to the *bonds* authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act."

Amending clause.

Section 8. Section 17-A of Initiative No. 54 is amended to read as follows:

No impairment of security of existing bonds.

"Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000) of bonds *or of the six million dollars ($6,000.000) of bonds* heretofore sold under the authority of said Initiative Measure No. 54, *as amended,* or of the interest thereon, but the provision made by said Initiative, *as amended,* for the payment of said bonds and the interest thereon shall remain inviolate."

Claim for benefits—time for filing.

Section 9. Claims for benefits under the provisions of sections 2 and 3 of Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of three (3) years after the January first next following the date of the passage and approval of this amendatory act, however, such three (3) year period shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Repealing clause.

Section 10. Sections 1, 2 and 12 of Initiative No. 54, as amended, are repealed.

Severability.

Section 11. It is the intent of the legistlative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 19, 1963.

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## CHAPTER 271

'The Department of Administration Act' Creating a Department of Administration With Duties and Powers In



HeinOnline -- 1963 vol. II 1198 1963

The Areas of Accounting, Purchasing, Planning and Construction of State Buildings, Records Management, Maintenance and Custody of Capitol Buildings, and General Services; Abolishing the State Records Committee, the State Laboratory Commission, the Veterans' Memorial Fund Commission, the State Furnishing Board, and the Office of Capitol Custodian; Amending Sections 26-103, 75-310, 77-417, 77-419, 78-202, 78-302, 82-109.2, 82-308 and 82-3205, R. C. M. 1947; Repealing sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Title—"The department of administration act."

Section 1. **Title and purpose of act.** This act may be cited as "The Department of Administration Act." It is the purpose of this act to create a more coordinated, responsible, efficient and economical organization by centralizing and consolidating the general administrative and fiscal functions of state government into one department.

State controller—chief executive officer.

Section 2. **Department of administration—controller is chief executive officer.** There is in the state government a department of administration, hereafter referred to as "department." The state controller, ex officio state purchasing agent, hereafter referred to as "controller," is the chief executive officer of the department.

Divisions.

Section 3. **Divisions within department.** The department shall consist of the following divisions:

(1) Accounting

(2) Purchasing

(3) Architecture and Engineering

(4) General Services

Appointment—division heads.

Each division shall be administered by a division head who shall be appointed by, and serve at the pleasure of the controller.



HeinOnline -- 1963 vol. II 1199 1963

Duties of controller.

Section 4. **Duties of controller.** The controller, in addition to performing the duties assigned by this act, shall continue to perform the duties that are assigned to him elsewhere by law and shall allocate all of these duties among the divisions of the department. The controller shall allocate duties that relate to the handling of public moneys and other fiscal duties in such a manner to insure sound internal fiscal control within the department.

Regulations.

Biennial report to governor.

Section 5. **Adoption of regulations—biennial reports.** The controller shall adopt and amend regulations, not inconsistent with the laws of the state, necessary for the effective administration of the department. The controller shall report biennially to the governor and the legislature.

Supervision—mailing facilities.

Section 6. **Supervision of mailing facilities.** The controller shall maintain and supervise any central mailing facilities for state agencies in the capitol area.

Supervision—telephone switchboard.

Section 7. **Supervision of central telephone switchboard.** The controller shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

Survey and allocation of office space.

Section 8. **Surveys and allocation of office space.** The controller shall periodically survey the needs of state agencies located in Helena and shall assign space in state office buildings to such agencies. No state agency shall lease, rent or purchase property for quarters in Helena without prior approval of the state controller.

Supervision—care of capitol area.

Section 9. **Custodial care of capitol buildings and grounds.** (1) It is the duty of the state controller to supervise and direct the work of caring for and maintaining buildings, equipment and grounds in the capitol area. The controller shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings, equipment and grounds in the capitol area.

Approval.

(2) No state agency may alter, improve, repair or remodel a state building in the capitol area without the approval of the controller.



HeinOnline -- 1963 vol. II 1200 1963

Custodian of state property.

Section 10. **Controller—custodian of state property.** The state controller is custodian of all state property in the state capitol area.

Duty to establish management program for state records.

Section 11. **Records management program.** The controller shall establish and administer a records management program for the efficient creation, utilization, maintenance, retention, preservation and disposal of state records and shall periodically survey current records management practices including the use of space, equipment, supplies, and personnel employed in creating, maintaining, and storing records.

"Records" defined.

Section 12. **Definition of records.** As used in this act the word "records" includes any paper, book, photograph, motion picture film, microflim, sound recording, map, drawing or other document that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, and extra copies of documents or publications are not included within the definition of the word "records".

Permission for destruction of records.

Section 13. **Destruction of records.** No records shall be destroyed without the permission of the controller. An agency desiring permission to destroy records shall submit a triplicate list of the records to the controller, showing in writing the nature and quantity of the records and the reasons why they should be destroyed. The controller shall send a copy of the list to the attorney general and the director of the historical society, each of whom shall, within thirty (30) days, return the list together with a statement of any reasons why the records should not be destroyed. If neither the director of the historical society nor the attorney general object, the controller may grant permission to destroy the records.

Section 14. **Definitions of building and construction.** In sections 15 through 21 of this act

"Building" defined.

(1) "Building" includes:

(a) A building, facility or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility or structure at a state institution.



HeinOnline -- 1963 vol. II 1201 1963

(c) A building, facility or structure owned or to be owned by a state agency, including the state highway commission.

Exclusions.

(2) "Building" does not include:

(a) A building, facility or structure owned or to be owned by a county, city, town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

"Construction" defined.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

Submission of proposed building programs to controller.

Section 15. **Preparation of building programs and submittal to the legislative assembly.** (1) Before July 1 of each even numbered year, each agency and institution of state government shall submit to the controller, on forms furnished by the controller, a proposed long range building program, if any, for the agency or institution. Each agency and institution shall furnish to the controller any additional information requested by him relating to the utilization of, or need for buildings.

Submission to governor.

(2) The controller shall examine the information furnished by each egency and institution and shall gather whatever additional information is necessary, and conduct whatever surveys are necessary, in order to provide a factual basis for determining the need for, and the feasibility of the construction of buildings. The information compiled by the controller shall be submitted to the governor before December 1 of each even numbered year.

Submission to legislative assembly—inclusions.

(3) During the first week of each regular legislative session, the governor shall submit to the legislative assembly:

(a) The requests of all state agencies and institutions compiled in the form of a comprehensive, long range proposed building program, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building, including necessary land acquisition.



HeinOnline -- 1963 vol. II 1202 1963

(iii) The reasons given by the institution or agency for needing each building.

(iv) A priority order recommended by the agency or institution for each building.

(v) The recommendation of the institution or agency as to when each building is needed.

(vi) Any comments of the governor.

(b) A building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building and necessary land acquisition.

(iii) The reasons for the governor's recommendation to construct each building during the forthcoming biennium.

(iv) The proposed method of financing for each building.

(v) Any long-range building plans.

(vi) Any changes in the law necessary to ensure an effective, well-coordinated building program for the state.

Section 16. **Authority to construct buildings.** (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars ($25,000.00) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars ($25,000.00) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent shall be in the form of a joint resolution.

Limitation—authority to construct.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

Emergency repair.

(b) The regents of the university of Montana may authorize the construction of residence halls, dormitories, apartments and other student housing facilities; dining

University facilities.



HeinOnline -- 1963 vol. II 1203 1963

rooms and halls and other food service facilities; and student union buildings and facilities.

Construction financed by federal or private moneys.

(c) The regents of the university of Montana, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of such a building will not result in any new programs.

Section 17. **Supervision of construction of buildings.**

Construction of building costing more than $10,000—duties and powers of controller.

(1) For the construction of a building costing more than ten thousand dollars ($10,000.00) the state controller shall:

(a) Review and approve all plans and working drawings prepared by architects.

(b) Approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys.

(c) Under the supervision and with the approval of the board of examiners, solicit, accept and reject bids and award all contracts to the lowest qualified bidder.

(d) Review and, with the consent of the board of examiners, approve all change orders.

(e) Accept the building when completed according to approved plans and specifications.

Declaration of intent.

(2) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section.

Section 18. **General powers and duties of controller.** In carrying out his powers relating to the construction of buildings the controller may:

General powers and duties relating to construction.

(1) Inspect buildings not under construction.

(2) Contract with the federal government for advance planning funds.

(3) Purchase, lease and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for such buildings.



HeinOnline -- 1963 vol. II 1204 1963

(4) Issue and sell bonds and other securities.

(5) Maintain an inventory of all buildings.

(6) Appoint an advisory council of licensed architects and consulting engineers to advise and assist him on matters involving their respective professions.

(7) Appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans and specifications. The cost of such supervision may be charged against moneys available for construction.

Section 19. **Appointment of architects and consulting engineers.** The administrative head of the institution or agency for which a building is constructed shall appoint any architect or consulting engineer retained for work on the building, subject to approval by the state controller and the state board of examiners.

Appointment of architect and consulting engineer.

Section 20. **Policy regarding practice of architecture —preparation of working drawings by department limited.**

(1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from

Policy of state not to practice architecture— exceptions.

(a) Engaging in pre-planning functions necessary to prepare a building program for presentation to the legislative assembly,

(b) Supervising construction as provided in Section 18, subsection (7) of this act, or

(c) Preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, when the total cost of the construction will exceed ten thousand dollars ($10,000.00).

Limitation.

Section 21. **Pecuniary interest in construction of buildings prohibited.** Neither the controller nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract,

Pecuniary interest forbidden.



HeinOnline -- 1963 vol. II 1205 1963

transaction or project involving the construction of a building.

State agencies abolished.

Section 22. **State agencies abolished.** The state records committee, the state laboratory commission, the veterans' memorial fund commission, the state furnishing board, and the office of capitol custodian are abolished.

Transfer.

All records, property and moneys of these agencies are transferred to the department of administration.

Amending clause.

Section 23. Section 26-103, R. C. M. 1947 is amended to read as follows:

State fish and game commission—organization—meetings.

"26-103. **Meetings.** The members of the commission shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place

Quorum.

specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before

Records.

it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or

Offices.

documents for the commission. The principal offices of the commission shall be located near the capitol building in Helena, and suitable and adequate rooms therefor, together with janitor services, light, heat and water shall

Rental.

be furnished by the state of Montana, rental shall be charged at two dollars ($2.00) per square foot per year

Deposit.

for the total space occupied. Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings. Such rental collected shall be deposited to the credit of the state general fund."

Amending clause.

Section 24. Section 75-310, R. C. M. 1947 is amended to read as follows:

"75-310. **Control of expenditures of state institutions.**

State board of education shall control expenditures.

The state board of education pursuant to the terms of appropriations of the state legislature or of Congress or of gifts of donors, shall determine the need for all expenditures and control the purposes for which all funds



HeinOnline -- 1963 vol. II 1206 1963

of said institutions shall be spent, subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923."

Section 25. Section 77-417, R. C. M. 1947 is amended to read as follows: Amending clause.

"77-417. **Acceptance of National Defense Facilities Act of 1950—*controller* authorized to enter into contracts for and on behalf of state.** For and on behalf of the state of Montana, and in conformity with the requirements and provisions of that certain act of Congress approved September 11, 1950, known as the "National Defense Facilities Act," and entitled "An act to provide for the acquisition, construction, expansion, rehabilitation, conversion, and joint utilization of facilities necessary for the administration and training of the reserve components of the armed forces of the United States," and for other purposes, which act is also known as "The National Defense Facilities Act of 1950, Public Law 783, Congress of the United States of America," and amendments and/or extensions thereof as may hereafter be made, is hereby assented to. The *state controller* is hereby authorized to, for, and on behalf of the state of Montana, to enter into all contracts and agreements with the United States government, or any office, department, or bureau thereof, relative to the location, acquisition, construction, expansion, rehabilitation, or conversion of facilities necessary for the administration and training of the Montana national guard, its units, its components, or any organization affiliated therewith, and other purposes in connection therewith, in order to comply with requirements and provisions of said act of Congress; and the *state controller* for and on behalf of the state of Montana is hereby authorized to do all things necessary, or required, to carry out fully the cooperation contemplated by said act of Congress and hereby assented to relative to the location, acquisition, construction, expansion, rehabilitation, conversion, and joint utilization of facilities necessary for the administration and training of the Montana national guard, its units, its components, or any organization affiliated therewith."

Assent to "National Defense Facilities Act."

State controller authorized to contract for defense facilities.

Montana national guard facilities.

Section 26. Section 77-419, R. C. M. 1947 is amended to read as follows: Amending clause.



HeinOnline -- 1963 vol. II 1207 1963

State controller authorized to accept grants, donations, gifts, on behalf of state.

"77-419. **Power to receive grants, donations, and gifts —contracting officer.** The *state controller* on behalf of the state of Montana is hereby authorized to receive grants, donations, and gifts of any property on behalf of the state of Montana for the purpose of complying with the aforesaid act of Congress, and any property acquired by the state of Montana, as aforesaid, because of said act of Congress, shall remain in the people of the state of Montana."

Amending clause.

Section 27. Section 78-202, R. C. M. 1947 is amended to read as follows:

Purpose and use—"The veterans and pioneers memorial building."

"78-202. **Purpose and use of building.** *"The Veterans and Pioneers Memorial Building"* shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of *the United Spanish War Veterans of Montana, the Veterans of Foreign Wars of Montana, the American Legion of Montana, the Disabled American Veterans of Montana,* the World War I Veterans of Montana, the historical society of Montana, the society of Montana pioneers, and the sons and daughters of Montana pioneers, and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations, and for the librarian and other employees of the historical society of Montana."

Office quarters provided.

Amending clause.

Section 28. Section 78-302, R. C. M. 1947 is amended to read as follows:

Authorized use of veterans' memorial fund.

"78-302. *Veterans'* **memorial fund.** The veterans' memorial fund *may be expended only* for the construction, maintenance, furniture, dioramas, displays, works of art and workmanship for the veterans' quarters of the veterans' - pioneers' memorial building. *The veterans' organizations occupying the veterans' quarters of the Veterans and Pioneers Memorial Building, before July 1 of each year preceding a legislative session, shall submit a budget to the state controller for expenditures from the veterans' memorial fund for the next biennium. The controller shall include in the department of administration budget, a request for an appropriation from the veterans' and pioneers' memorial fund for the purposes mentioned above."*

Duty to submit budget.

Request for appropriation.



HeinOnline -- 1963 vol. II 1208 1963

Amending clause.

Section 29. Section 82-109.2, R. C. M. 1947 is amended to read as follows:

Duty of state controller to audit claims.

"82-109.2. **Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims.** The state controller shall pre-audit all liquidated or settled claims against the state, *including claims by transportation companies arising from state transportation requests,* ascertaining that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged and that the appropriation is available and adequate, and (4) the expenditure is not illegal. If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conducted by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds, and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure. If no appropriation is available for the payment of a settled or liquidated claim, the controller shall audit it and, if it is a valid claim, transmit it to the governor through the office of director of the budget for presentation to the legislative assembly.

Spot-check basis.

Submission for appropriation.

Submission—unliquidated claims.

Any unliquidated or unsettled claims submitted to the state controller shall be transmitted to the state board of examiners to be processed as provided by law."

Amending clause.

Section 30. Section 82-308, R. C. M. 1947 is amended to read as follows:

Report of sporting events.

"82-308. **Report of ticket sales—tax on gross receipts—disposition of tax moneys received.** Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall, within twenty-four hours after the determination of any boxing, sparring or wrestling contest or exhibition, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such boxing, sparring or wrestling contest or exhibition and the amount of gross proceeds thereof, and such other matters as the commission may prescribe, and shall also within the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts after

Payment of tax on gross receipts.



HeinOnline -- 1963 vol. II 1209 1963

deducting the federal admission tax if any from the sale of tickets of admission to such boxing, sparring or wrestling match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commission, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in a separate and special fund to be designated as the "veterans' memorial fund," and used exclusively for the purposes *and* expenses above specified and as prescribed in section 78-302. Such funds to be drawn upon and expended only upon proper and legal claims made against the fund. All money in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state moneys."

Deposit in veterans' memorial fund—use.

Investment.

Amending clause. Section 31. Section 82-3205, R. C. M. 1947 is amended to read as follows:

Duty of director of historical society to establish microfilm division—purpose.

"82-3205. **Microflim division—creation.** The *director of the historical society* shall establish in his department a division to be known as the Microfilm Division for the preservation by photographic methods of state records required or permitted by law to be preserved, and may employ such personnel as may be necessary for the proper and efficient operation of the division. Provided, however, that it shall be the duty of the department, commission or agency which records are to be preserved to prepare said records as the librarian shall direct."

Severability. Section 32. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Repealing clause. Section 33. Sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947, are repealed.

Approved March 19, 1963.



HeinOnline -- 1963 vol. II 1210 1963

# APPROPRIATIONS, MEMORIALS AND RESOLUTIONS

**Enacted By The**

## Thirty-eighth Legislative Assembly

STATE OF MONTANA

1963

HeinOnline -- 1963 vol. II 1211 1963

HeinOnline -- 1963 vol. II 1212 1963

# APPROPRIATIONS, MEMORIALS AND RESOLUTIONS

## HOUSE BILL NO. 1

An Act to Appropriate Money for the Legislative Assembly and for the Payment of Per Diem to the Officers and Attaches and for Incidental Expenses of the Thirty-Eighth Legislative Assembly of the State of Montana.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That the following sums, or so much thereof as may be necessary, be, and the same are hereby appropriated, out of any money in the state treasury, not otherwise appropriated, for the objects and purposes hereinafter expressed, but for no other;

For the payment of mileage and per diem to the members of the thirty-eighth legislative assembly of the State of Montana.

One hundred eighty-six thousand five hundred dollars $186,500.00

For the payment of per diem to the officers and attaches of the thirty-eighth legislative assembly of the State of Montana.

One hundred fifty-seven thousand six hundred ninety-six dollars ..... $157,696.00

For the payment of incidental expenses of the thirty-eighth legislative assembly of the State of Montana.

One hundred thirty-six thousand seven hundred forty-nine dollars ..... $136,749.00

Section 2. The amounts appropriated herein are to be used for the purpose designated. However, if there is a surplus in any one item, it may be transferred to either of the other two items appropriated herein for the legislative assembly; provided the aggregate amount of all three appropriations shall be neither increased or decreased.

Section 3. Appropriations hereinabove provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved January 11, 1963.



HeinOnline -- 1963 vol. II 1213 1963

## HOUSE BILL NO. 59

An Act to Appropriate Money for the Operation of the Legislative Council for the Biennium Beginning July 1, 1963.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The following amounts are appropriated out of the general fund to the legislative council for the biennium beginning July 1, 1963.

Operation and capital, eighty-seven thousand two hundred dollars ..... $87,200.00

Bill drafting service, five thousand three hundred twenty-five dollars ..... $ 5,325.00

Approved March 11, 1963.

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## HOUSE BILL NO. 85

An Act to Appropriate Money for the Payment of Cigarette Tax Refunds, Corporation License Tax Refunds, Inheritance Tax Refunds, and Unclaimed Dividends of a Closed Banking Corporation.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The following amounts, or so much thereof as may be necessary, are appropriated from the designated funds for the purposes specified:

STATE BOARD OF EQUALIZATION

FROM THE GENERAL FUND

For cigarette tax refunds, seven thousand five hundred fifty-six dollars and seventeen cents ($7,556.17), more particularly itemized as follows:

| | |
|---|---|
| The American Tobacco Company | $4,121.78 |
| R. J. Reynolds Tobacco Company | 1,621.03 |
| Philip Morris, Inc. | 1,813.36 |

FROM THE WAR VETERANS COMPENSATION

BOND RETIREMENT FUND NO. 2 (387-41)

For cigarette tax refunds, one thousand six hundred one dollars and thirty-two cents ($1,601.32), more particularly itemized as follows:



HeinOnline -- 1963 vol. II 1214 1963

| | |
|---|---|
| P. Lorillard Company | $ 407.51 |
| Liggett & Meyers Tobacco Co. | 1,193.81 |

FROM THE WAR VETERANS COMPENSATION BOND RETIREMENT FUND NO. 1 (387-15)

For cigarette tax refunds, two thousand four hundred ninety-three dollars and eighty-one cents ($2,493.81), more particularly itemized as follows:

| | |
|---|---|
| Liggett & Meyers Tobacco Company | $1,954.87 |
| R. J. Reynolds Tobacco Company | 460.72 |
| Louis S. Cohn Company | 48.94 |
| Louis S. Cohn Company | 29.28 |

FROM THE GENERAL FUND

For corporation license tax refunds, twenty-eight thousand four hundred thirty-one dollars and sixteen cents ($28,431.16), more particularly itemized as follows:

| | |
|---|---|
| Various claimants | $16,776.66 |
| Capri Meal, Inc. | 182.42 |
| Fulton Ranch Company | 7,216.86 |
| Guaranty Finance Company | 362.82 |
| Beck Motor Company | 217.13 |
| The Holter Company | 3,675.27 |

FROM THE GENERAL FUND

For inheritance refunds, eight thousand three hundred twenty-one dollars and twenty-nine cents ($8,321.29), more particularly itemized as follows:

| | |
|---|---|
| Estate of Murl H. Gidel | $6,116.98 |
| Estate of Charles D. Beveridge | 867.26 |
| Shrine Hospital—bequest from estate of Norman L. Towne | 164.11 |
| Estate of James G. McComas | 88.73 |
| Estate of Elizabeth G. Clary | 72.90 |
| Estate of John F. Sullivan | 232.88 |
| Jefferson County Treasurer—duplicate payment of tax | 123.09 |
| Montana Division American Cancer Society—bequest from estate of Olai Grove | 490.05 |
| Estate of Nancy M. Clayton | 165.29 |



HeinOnline -- 1963 vol. II 1215 1963

STATE EXAMINER
FROM THE GENERAL FUND

For unclaimed dividends on closed banking corporation:
Estate of Mrs. Anna Lee Moore ..... $ 138.72
Section 2. This act is effective on passage and approval.

Approved February 2, 1963.

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## HOUSE BILL NO. 109

An Act to Appropriate Twenty-Five Thousand Dollars ($25,000) to the State Highway Commission for State Parks Operations and Expenses for the Period Beginning on the Effective Date of This Act and Ending June 30, 1963; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated, in addition to money previously appropriated, out of the state parks fund to the state highway commission for state parks operations and expenses for the period beginning on the effective date of this act and ending June 30, 1963.

Section 2. This appropriation shall be held valid notwithstanding the provisions of the budget act.

Section 3. This act shall be effective upon its passage and approval.

Approved February 25, 1963.

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## HOUSE BILL NO 147

An Act to Appropriate Money for the Purchase of Replacement Volume 6 of the Revised Codes of Montana of 1947; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That the following sum or sums or so much thereof as may be necessary be, and the same are hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purchase of Replacement Volume 6 of the Revised Codes of Montana, 1947, published by the publishers and distributors thereof, as follows:



HeinOnline -- 1963 vol. II 1216 1963

FROM THE GENERAL FUND

For four hundred fifty-eight (458) copies of Replacement Volume 6, at twenty-four dollars ($24.00) per volume, ten thousand nine hundred and ninety-two dollars ..$10,992.00

Section 2. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved February 8, 1963.

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## HOUSE BILL NO. 148

An Act to Appropriate Money for the Purchase of Replacement Volume 7 of the Revised Codes of Montana of 1947; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That the following sum or sums or so much thereof as may be necessary be, and the same are hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purchase of Replacement Volume 7 of the Revised Codes of Montana, 1947, published by the publishers and distributors thereof, as follows:

FROM THE GENERAL FUND

For four hundred fifty-eight (458) copies of Replacement Volume 7, at twenty-four dolars ($24.00) per volume, ten thousand nine hundred ninety-two dollars ($10,992.00).

Section 2. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved February 8, 1963.

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## HOUSE BILL NO. 149

An Act to Appropriate Money for the Purchase of Cumulative



HeinOnline -- 1963 vol. II 1217 1963

Pocket Supplements of 1963, for the Revised Codes of Montana, 1947; and Providing for an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. That the following sum or sums or so much thereof as may be necessary be, and the same are hereby appropriated, for the purchase of Cumulative Pocket Supplements of 1963, for the Revised Codes of Montana, 1947, as follows:

FROM THE GENERAL FUND

Four hundred fifty-eight (458) sets Cumulative Pocket Supplements for 1963, for the Revised Codes of Montana, 1947, at twenty-four dollars ($24.00) per set, ten thousand nine hundred ninety-two dollars ..... $10,992.00

Section 2. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved February 8, 1963.

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## HOUSE BILL NO. 400

An Act Appropriating Moneys for Certain Agencies and Institutions of State Government for the Biennium Ending June 30, 1963.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The following amounts are appropriated for the biennium ending June 30, 1963:

APPRENTICESHIP COUNCIL

FROM THE GENERAL FUND

Operation, six thousand dollars ..... $ 6,000.00

SECRETARY OF STATE

FROM THE GENERAL FUND

Operation, five thousand one hundred and seventy-five dollars ..... $ 5,175.00



HeinOnline -- 1963 vol. II 1218 1963

STATE INDUSTRIAL SCHOOL

FROM THE GENERAL FUND

Capital, eighty-seven thousand two hundred dollars .....$87,200.00

STATE TRAINING SCHOOL AND HOSPITAL

FROM THE GENERAL FUND

Operation, seventy thousand dollars .....$70,000.00

LIVESTOCK COMMISSION

FROM THE LIVESTOCK COMMISSION FUND

Capital, seven thousand eight hundred seventy-four and seventy-seven one-hundredths dollars ..... $ 7,874.77

Section 2. This act is effective on its passage and approval.

Approved February 25, 1963.

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## HOUSE BILL NO. 402

An Act Appropriating Moneys to the State Forester for the Fiscal Year Ending June 30, 1963.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. There is hereby appropriated to the state forester for the fiscal year ending June 30, 1963, the following amounts:

FROM CLARKE-McNARY FUNDS, U. S. AID

Fire suppression, state and private lands, fifteen thousand two hundred sixty dollars .....$15,260.00

Disbursement to fire protection agencies, thirty-six thousand one hundred thirteen dollars .....$36,113.00

Section 2. This act is effective on passage and approval.

Approved February 25, 1963.

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## SENATE SUBSTITUTE FOR HOUSE BILL NO. 414

An Act to Appropriate Money to the Attorney General, State Auditor, Governor, Railroad and Public Service Commission, Secre-



HeinOnline -- 1963 vol. II 1219 1963

tary of State, Supreme Court, State Treasurer, and Superintendent of Public Instruction for Operation and Capital for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For purposes of this act, unless otherwise stated:

(1) The term 'operation' means all expenditures for personal services, all ordinary and necessary expenditures for the operation of the agency to which the appropriation applies, and repairs and maintenance.

(2) The term 'personal services' means all salaries and wages of full-time, part-time and temporary employees of the state and includes the state's contribution for social security, public employees' retirement, teachers' retirement and industrial accident insurance.

(3) The term 'repairs and maintenance' means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alteration of existing buildings are a capital expenditure and are not repairs and maintenance.

(4) The term 'capital' means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one year. Capital shall be charged with the replacement of existing capital items, as well as new acquisitions.

(5) The term 'approved budget amendment' means approval by the state's chief budget officer upon submission to him, through the budget director.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. Each board, office or commission shall make such modifications in its administrative practices and changes in its various accounts including personal services, supplies and materials, communication, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation; provided, however, that money appropriated for operation cannot be transferred to capital without an approved budget amendment. It is unlawful to purchase supplies



HeinOnline -- 1963 vol. II 1220 1963

for a succeeding biennium from an appropriation contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. The following moneys are appropriated for the biennium ending June 30, 1965:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| ATTORNEY GENERAL | | |
| (1) From the general fund, for operation and capital<br>Capital expenditures shall not exceed $2,910.00 for the fiscal year ending June 30, 1964; and shall not exceed $2,250.00 for the fiscal year ending June 30, 1965. | $122,775.00 | $124,915.00 |
| (2) The amount of $24,224.00 is appropriated from the agency fund, escheated estates account (formerly fund No. 127) to the earmarked revenue fund, escheated estates account. From the earmarked revenue fund, escheated estates account, operation | $ 12,112.00 | $ 12,112.00 |
| GOVERNOR | | |
| (1) From the general fund, for operation and capital<br>Capital expenditures shall not exceed $950.00 for the fiscal year ending June 30, 1964; and shall not exceed $950.00 for the fiscal year ending June 30, 1965. | $ 75,750.00 | $ 77,525.00 |
| RAILROAD AND PUBLIC SERVICE COMMISSION | | |
| (1) From the general fund, for operation and capital<br>Capital expenditures shall not exceed $500.00 for the fiscal year end- | $179.390.00 | $178,300.00 |



HeinOnline -- 1963 vol. II 1221 1963

| | | |
|---|---|---|
| ing June 30, 1964; and shall not exceed $750.00 for the fiscal year ending June 30, 1965. | | |
| STATE AUDITOR | | |
| (1) From the general fund, for operation and capital<br>Capital expenditures shall not exceed $3,200.00 for the biennium ending June 30, 1965. | $146,355.00 | $144,025.00 |
| (2) From the earmarked revenue fund, highway account (formerly fund No. 138) for operation | $ 15,000.00 | $ 15,000.00 |
| (3) From the general fund, for auditing insurance and investment companies, operation<br>Revenues received in excess of this estimate may be made available by approved budget amendment; however, total expenditures for auditing insurance and investment companies for a fiscal year may not exceed collections under Sections 15-2024 and 40-2717, R. C. M. 1947, for the fiscal year. | $ 40,565.00 | $ 40,565.00 |
| (4) For payments to fire department relief associations there is appropriated from the earmarked revenue fund, firemen's disability and and pension account (formerly fund No. 218) an amount sufficient to to meet the requirements of Section 11-1919, R. C. M. 1947. | | |
| SECRETARY OF STATE | | |
| (1) From the general fund, for operation and capital<br>Capital expenditures shall not exceed $1,595.00 for the fiscal year ending June 30, 1964; and shall not exceed the sum of $450.00 for the fiscal year ending June 30, 1965. | $ 89,796.00 | $ 95,402.00 |



HeinOnline -- 1963 vol. II 1222 1963

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| SUPREME COURT | | |
| (1) From the general fund, for operation and capital | $127,475.00 | $134,450.00 |
| (2) From the general fund, for bar examinations and investigation of complaints, operation | $ 5,000.00 | $ 5,150.00 |
| (3) From the general fund, for expenses of the commission for revision of criminal law and practice Capital expenditures shall not exceed $1,500.00 for the fiscal year ending June 30, 1964; and shall not exceed $1,500.00 for the fiscal year ending June 30, 1965. | $ 3,000.00 | $ 3,000.00 |
| STATE TREASURER | | |
| (1) From the general fund, for operation and capital Capital expenditures shall not exceed $500.00 for the biennium ending June 30, 1965. | $ 43,745.00 | $ 42,895.00 |
| SUPERINTENDENT OF PUBLIC INSTRUCTION | | |
| (1) From the general fund for the administration of the department of public instruction, *teacher certification,* operation and capital | $169,805.00 | $156,415.00 |
| (2) From the general fund for the national defense education act of 1958 (P. L. 85-864), operation | $ 80,000.00 | $ 80,000.00 |
| (3) From the general fund for the administration of public school transportation reimbursement, operation and capital | $ 17,929.00 | $ 18,302.00 |
| (4) From the general fund for vocational education, operation | $ 20,000.00 | $ 20,000.00 |
| (5) From the general fund for audio-visual education, operation and capital | $ 47,500.00 | $ 50,000.00 |



HeinOnline -- 1963 vol. II 1223 1963

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| (6) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217), for audio-visual education, operation and capital | $ 39,985.00 | $ 40,490.00 |
| (7) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217), for general educational development (high school equivalency) testing program, operation | $ 4,750.00 | $ 4,750.00 |
| (8) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217), for special education division for exceptional child services, operation and capital | $ 18,437.00 | $ 17,555.00 |
| (9) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217)), for vocational education, operation and capital | $ 59,150.00 | $ 62,840.00 |
| (10) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217), for the school lunch program, operation and capital | $ 37,255.00 | $ 38,040.00 |
| (11) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217), for distribution to schools for vocational education | $ 45,000.00 | $ 45,000.00 |
| (12) From the earmarked revenue fund, school equalization aid account (formerly fund No. 217), for state aid administration, operation | $ 20,000.00 | $ 20,000.00 |
| (13) The amount of $20,000.00 is appropriated from the earmarked revenue fund, school equalization aid account (formerly fund No. 217), to the revolving fund, school | | |



HeinOnline -- 1963 vol. II 1224 1963

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| lunch program account. The amount of $20,000.00 is appropriated from the revolving fund, school lunch program account, to cover the handling charges of commodities to districts, to be reimbursed by such districts. Any balance remaining, in the revolving fund, school lunch program account, at the end of the biennium shall revert to the earmarked revenue fund, school equalization aid account. | | |
| (14) From the federal and private revenue fund for area redevelopment, operation and capital | $ 8,000.00 | $ 18,175.00 |
| (15) From the federal and private revenue fund for the area vocational program, operation and capital | $ 7,800.00 | $ 9,275.00 |
| (16) From the federal and private revenue fund for the civil defense adult education program, operation | $ 12,000.00 | $ 12,000.00 |
| (17) From the federal and private revenue fund for administration of the George-Barden Act, operation and capital | $ 43,000.00 | $ 43,000.00 |
| (18) From the federal and private revenue fund for Indian education administration, operation | $ 17,785.00 | $ 18,235.00 |
| (19) From the federal and prirevenue fund for the national defense education act of 1958, operation and capital | $ 70,000.00 | $ 70,000.00 |
| (20) From the federal and private revenue fund for administration of the Smith-Hughes Act, operation and capital | $ 2,000.00 | $ 2,000.00 |
| (21) From the federal and private revenue fund, manpower and development training act, operation | $ 8,250.00 | $ 9,287.00 |



HeinOnline -- 1963 vol. II 1225 1963

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|---|---|---|
| (22) From the federal and private revenue fund, practical nursing account (formerly fund No. 104-97), operation | $ 6,000.00 | $ 6,000.00 |
| Revenues received in excess of the estimates in subsections (16) through (24) may be spent without approved budget amendment. Capital expenditures for the programs listed below shall not exceed the amounts specified: | | |
| Administration | $ 4,540.00 | $ 1,925.00 |
| Audio-visual education, general fund | $ 47,500.00 | $ 50,000.00 |
| Audio-visual education, earmarked revenue fund | $ 2,270.00 | $ 1,895.00 |
| Certification | $ 465.00 | $ 265.00 |
| School lunch | $ 250.00 | $ 265.00 |
| Special education | $ 120.00 | $ 200.00 |
| Vocational education | $ 1,000.00 | $ —0— |
| Administration of public school transportation reimbursements | $ 300.00 | $ 360.00 |

Section 4. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 14, 1963.

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## HOUSE BILL NO. 418

An Act to Appropriate Money to Certain Licensing and Examining Boards for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for the operation of the agency to which the appropriation applies, and repairs and maintenance.



HeinOnline -- 1963 vol. II 1226 1963

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and includes the state's contribution for social security, public employees' retirement, teachers' retirement and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alteration of existing buildings are a capital expenditure and are not repairs and maintenance.

(4) The term "capital" means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions, but does not include expenditures for construction or furnishing of buildings or purchase of land unless specifically authorized.

(5) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, through the budget director.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. This agency shall make such modifications in its administrative practices and changes in its various accounts including personal services, supplies and materials, communication, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation; provided, however, that money appropriated for operation cannot be transferred to capital without an approved budget amendment. It is unlawful to purchase supplies for a succeeding biennium from an appropriation contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. The following moneys are appropriated for the biennium ending June 30, 1965:



HeinOnline -- 1963 vol. II 1227 1963

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| ABSTRACTERS BOARD OF EXAMINERS | | |
| From the earmarked revenue fund, abstracters' board account (formerly fund No. 110), for operation and capital | $ 617.00 | $ 617.00 |
| BOARD OF ARCHITECTURAL EXAMINERS | | |
| From the earmarked revenue fund, architectural board account (formerly fund No. 107), for operation and capital | $ 3,075.00 | $ 3,075.00 |
| ATHLETIC COMMISSION | | |
| From the earmarked revenue fund, veteran's memorial account (formerly fund No. 102-15), for operation and capital | $ 950.00 | $ 950.00 |
| BOARD OF BARBER EXAMINERS | | |
| From the earmarked revenue fund, barber examiners' account (formerly fund No. 233), for operation and capital | $ 8,068.00 | $ 7,968.00 |
| BOARD OF CHIROPRACTIC EXAMINERS | | |
| From the earmarked revenue fund, chiropractic board account (formerly fund No. 119), for operation and capital | $ 3,200.00 | $ 2,950.00 |
| EXAMINING BOARD OF COSMETOLOGY | | |
| From the earmarked revenue fund, cosmetology board account (for- | | |



HeinOnline -- 1963 vol. II 1228 1963

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| merly fund No. 185), for operation and capital | $ 15,540.00 | $ 15,030.00 |
| BOARD OF DENTAL EXAMINERS | | |
| From the earmarked revenue fund, dental examiners' account (formerly fund No. 199), for operation and capital | $ 5,250.00 | $ 5,250.00 |
| STATE BOARD OF MORTICIANS | | |
| From the earmarked revenue fund, mortician's board account (formerly fund No. 109), for operation and capital | $ 3,000.00 | $ 3,000.00 |
| BOARD OF FOOD DISTRIBUTORS | | |
| From the earmarked revenue fund, food distributors' board account (formerly fund No. 200), for operation and capital | $ 27,628.00 | $ 27,628.00 |
| BOARD OF MEDICAL EXAMINERS | | |
| From the earmarked revenue fund, medical examiners' account (formerly fund No. 152), for operation and capital | $ 12,540.00 | $ 12,000.00 |
| BOARD OF NURSING | | |
| From the earmarked revenue fund, board of nursing account (formerly fund No. 224), for operation and capital | $ 24,525.00 | $ 24,822.00 |
| BOARD OF EXAMINERS IN OPTOMETRY | | |
| Form the aermarked revenue fund, optometry examiners' board account | | |



HeinOnline -- 1963 vol. II 1229 1963

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| (formerly fund No. 215), for operation and capital | $ 2,709.00 | $ 2,709.00 |
| BOARD OF OSTEOPATHIC EXAMINERS | | |
| From the earmarked revenue fund, osteopathic examiners' account (formerly fund No. 221), for operation and capital | $ 300.00 | $ 300.00 |
| BOARD OF PHARMACY | | |
| From the earmarked revenue fund, pharmacy board account (formerly fund No. 220), for operation and capital | $ 17,437.00 | $17,577.00 |
| BOARD OF PLUMBING EXAMINERS | | |
| From the earmarked revenue fund, plumbing board account (formerly fund No. 190), for operation and capital | $ 11,342.00 | $ 11,693.00 |
| BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS | | |
| From the earmarked revenue fund, professional engineers' account (formerly fund No. 133), for operation and capital | $ 9,410.00 | $ 9,845.00 |
| BOARD OF VETERINARY MEDICAL EXAMINERS | | |
| From the earmarked revenue fund, veterinary examiners' account (formerly fund No. 232), for operation and capital | $ 1,505.00 | $ 1,505.00 |



HeinOnline -- 1963 vol. II 1230 1963

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| WATER WELL CONTRACTORS | | |
| EXAMINING BOARD | | |
| From the earmarked revenue fund water well contractors' account (formerly fund No. 171), for operation and capital | $ 4,605.00 | $ 3,755 00 |
| SANITARIANS REGISTRATION | | |
| COUNCIL | | |
| From the earmarked revenue fund, sanitarians' registration account (formerly fund No. 035), for operation and capital | $ 200.00 | $ 200.00 |

Section 4. Revenues received in excess of the estimates in all appropriations in this act may be made available by approved budget amendment.

Section 5. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 11, 1963.

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## HOUSE BILL NO. 419

An Act to Appropriate Money to Certain State Agencies for Operation, Capital, Grants and Benefits for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for the operation of the agency to which the appropriation applies, and repairs and maintenance.

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and includes the state's contribution for social security, public em-



HeinOnline -- 1963 vol. II 1231 1963

ployees' retirement, teachers' retirement and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alterations of existing buildings are capital expenditures and are not repairs and maintenance.

(4) The term "capital" means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions, but does not include expenditures for construction or furnishing of buildings or purchase of land unless specifically authorized.

(5) The term "grants and benefits" means expenditures for grants to political subdivisions, associations, or individuals, and includes, but is not limited to retirement and disability compensation, and unemployment benefits.

(6) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, through the budget director.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. Each board, office or commission shall make such modifications in its administrative practices and changes in its various accounts including personal services, supplies and materials, comunication, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation; provided, however, that money appropriated for operation cannot be transferred to capital without an approved budget amendment. It is unlawful to purchase supplies for a succeeding biennium from an appropriation contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.



HeinOnline -- 1963 vol. II 1232 1963

Section 3. The following moneys are appropriated for the biennium ending June 30, 1965:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| DEPARTMENT OF AGRICULTURE | | |
| (1) From the general fund, operation and capital | $390,818.00 | $384,850.00 |
| Capital expenditures shall not exceed $9,678.00 for the fiscal year ending June 30, 1964; and shall not exceed $4,285.00 for the fiscal year ending June 30, 1965. | | |
| (2) From the general fund, for cherry orchard disease control | $ 10,000.00 | $ —0— |
| If this amount is not spent for the purpose designated during the first fiscal year of the biennium, it may be spent for operation during the second fiscal year of the biennium. | | |
| (3) From the earmarked revenue fund, highway account (formerly fund No. 138), operation | $ 7,000.00 | $ 7,000.00 |
| (4) The amount of $10,000.00 is appropriated from the general fund to the revolving fund, department of agriculture account, for each fiscal year of the biennium. From the revolving fund, department of agriculture account, for reimburseable expenditures for egg seals, cheese and butter inspection and grading and special inspection of scales, operation | $ 10,000.00 | $ 10,000.00 |
| In addition to the above appropriation, there is appropriated from the general fund all collections from the above programs. Any balance remaining in the revolving fund, department of agriculture account, at the end of a fiscal year shall revert to the general fund. | | |



HeinOnline -- 1963 vol. II 1233 1963

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| (5) From the earmarked revenue fund, grain services account (formerly fund No. 070), operation and capital | $197,500.00 | $193,500.00 |
| Revenues accruing to this account in excess of these estimates may be made available by approved budget amendment. Capital expenditures shall not exceed $10,000.00 for the fiscal year ending June 30, 1964, and shall not exceed $3,140.00 for the fiscal year ending June 30, 1965. | | |
| (6) From the federal and private revenue fund, U. S. marketing service account (formerly fund No. 104-37), operation | $ 14,000.00 | $ 16,500.00 |
| Revenues accruing to this account in excess of these estimates may be made available by approved budget amendment. | | |
| (7) From the earmarked revenue fund, real estate commission account, an amount sufficient to pay all legal and necessary claims. | | |
| STATE ENGINEER | | |
| (1) From the general fund, operation and capital | $158,650.00 | $164,375.00 |
| Salary for the head of the agency shall not exceed $10,000.00 per year for each year of the biennium. capital expenditures shall not exceed $4,350.00 for the fiscal year ending June 30, 1964; and shall not exceed $725.00 for the fiscal year ending June 30, 1965. | | |
| STATE ENTOMOLOGIST | | |
| (1) From the general fund for operation and capital | $ 28,950.00 | $ 28,800.00 |
| Capital expenditures shall not ex- | | |



HeinOnline -- 1963 vol. II 1234 1963

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| exceed $300.00 per year for each year of the biennium. | | |
| GRASS CONSERVATION | | |
| COMMISSION | | |
| (1) From the earmarked revenue fund, grass conservation commission account (formerly fund No. 231), operation | $ 6,900.00 | $ 6,900.00 |
| Revenues accruing to this fund in excess of these estimates may be made available by approved budget amendment. | | |
| BOARD OF HAIL INSURANCE | | |
| (1) From the earmarked revenue fund, hail insurance administration account (formerly fund No. 136), operation and capital | $ 38,130.00 | $ 38,000.00 |
| Salary for the head of the agency shall not exceed $7,500.00 per year for each year of the biennium. Capital expenditures shall not exceed $380.00 for the fiscal year ending June 30, 1964; and shall not exceed $250.00 for the year ending June 30, 1965. | | |
| HIGHWAY PATROL | | |
| (1) From the general fund, operation and capital | $1,667,150.00 | $1,698,350.00 |
| Salary for the head of the agency shall not exceed $11,317.50 for the fiscal year ending June 30, 1964; and shall not exceed $11,407.50 for the fiscal year ending June 30, 1965. Capital expenditures shall not exceed $125,000.00 for the fiscal year ending June 30, 1964; and shall not exceed $138,000.00 for the fiscal year ending June 30, 1965. | | |



HeinOnline -- 1963 vol. II 1235 1963

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|---|---|---|
| CO-ORDINATOR OF INDIAN AFFAIRS | | |
| (1) From the general fund, operation and capital | $ 11,163.00 | $ 11,315.00 |
| Salary for the head of the agency shall not exceed $5,500.00 per year for each year of the biennium. Capital expenditures shall not exceed $352.00 for the fiscal year ending June 30, 1964; and shall not exceed $350.00 for the fiscal year ending June 30, 1965. | | |
| INDUSTRIAL ACCIDENT BOARD | | |
| (1) From the general fund for the silicosis program, operation, and grants and benefits | $705,000.00 | $690,000.00 |
| (2) From the earmarked revenue fund, industrial accident administration account (formerly fund No. 140), operation and capital | $436,923.00 | $449,975.00 |
| Revenues accruing to this fund in excess of the estimate may be made available by approved budget amendment. | | |
| (3) From the earmarked revenue fund, volunteer firemen's compensation account (formerly fund No. 226), for grants and benefits | $ 4,000.00 | $ 3,000.00 |
| All legal and necessary claims in excess of these estimates may be paid without budget amendment. | | |
| COMMISSIONER OF STATE LANDS AND INVESTMENTS | | |
| (1) From the general fund, operation and capital | $143,200.00 | $143,625.00 |



HeinOnline -- 1963 vol. II 1236 1963

Capital expenditures shall not exceed $1,450.00 for the fiscal year ending June 30, 1964; and shall not exceed $425.00 for the fiscal year ending June 30, 1965.

LIVESTOCK COMMISSION

| | | |
|---|---|---|
| (1) From the general fund, operation | $ 20,000.00 | $ 20,000.00 |
| (2) From the earmarked revenue fund, livestock commission account (formerly funds No. 149 and 114); operation and capital | $487,964.00 | $490,566.00 |

Revenues accruing to this account in excess of these estimates may be made available by approved budget amendment. Capital expenditures shall not exceed $2,000.00 for the biennium.

LIVESTOCK SANITARY BOARD

| | | |
|---|---|---|
| (1) From the general fund, operation and capital | $173,550.00 | $187,270.00 |
| (2) From the general fund, grants and benefits | $ 10,000.00 | $ 10,000.00 |
| (3) From the general fund for meat inspection, operation | $ 63,540.00 | $ 66,180.00 |
| (4) From the earmarked revenue fund, livestock sanitary board account (formerly fund No. 151), operation | $126,987.00 | $114,988.00 |

(5) There is appropriated from the earmarked revenue fund, livestock sanitary board emergency account (formerly fund No. 150), an amount sufficient to meet emergencies under section 84-5211, R. C. M. 1947. All revenues accruing to the livestock sanitary board account and the livestock sanitary board



HeinOnline -- 1963 vol. II 1237 1963

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| emergency account in excess of the estimates in items (4) and (5) may be made available by approved budget amendment. Salary for the head of the agency shall be paid from the general fund and shall not exceed $12,000.00 per year for each year of the biennium. Capital expenditures shall not exceed $6,965.00 for the fiscal year ending June 30, 1964; and shall not exceed $4,900.00 for the fiscal year ending June 30, 1965. | | |
| MILK CONTROL BOARD | | |
| (1) From the earmarked revfund, milk control board account (formerly fund No. 049), operation and capital | $ 76,920.00 | $ 78,990.00 |
| Revenues accruing to this fund in excess of these estimates may be made available by approved budget amendment. Salary for the head of the agency shall not exceed $8,500.00 per year for each year of the biennium. Capital expenditures shall not exceed $1,000.00 per year for each year of the biennium. | | |
| OIL AND GAS CONSERVATION COMMISSION | | |
| (1) From the earmarked revenue fund, oil and gas conservation account, (formerly fund No. 219), operation and capital | $146,841.00 | $149,022.00 |
| All legal and necessary claims in excess of these estimates may be paid from this account without approved budget amendment. Capital expenditures shall not exceed $200.00 for the biennium ending June 30, 1965. | | |



HeinOnline -- 1963 vol. II 1238 1963

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| SOIL CONSERVATION | | |
| COMMITTEE | | |
| (1) From the general fund, operation | $ 12,874.00 | $ 12,874.00 |
| Salary for the head of the agency shall not exceed $6,000.00 per year for each year of the biennium. | | |
| DIVISION OF VOCATIONAL | | |
| REHABILITATION | | |
| (1) From the general fund, operation and capital | $130,000.00 | $130,000.00 |
| Capital expenditures shall not exceed $27,120.00 for the fiscal year ending June 30, 1964, and shall not exceed $27,570.00 for the fiscal year ending June 30, 1965. | | |
| (2) From the federal and private revenue fund, vocational rehabilitation account (formerly funds No. 104-18 and 104-20), operation | $386,036.00 | $389,598.00 |
| (3) From the federal and private revenue fund, vocational rehabilitation special projects account (formerly fund No. 023), as much as may be necessary for special rehabilitation projects, operation. | | |
| (4) From the agency fund, industrial insurance account (formerly fund No. 139), for grants and benefits under chapter 14, title 92, R. C. M. 1947. | $ 50,000.00 | $ 50,000.00 |
| Revenues accruing to the accounts in excess of the estimates in items (2), (3) and (4) may be made available by approved budget amendment. | | |



HeinOnline -- 1963 vol. II 1239 1963

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|---|---|---|
| STATE WATER CONSERVATION BOARD | | |
| (1) From the general fund, operation and capital | $287,000.00 | $272,500.00 |
| (2) From the earmarked revenue fund, water conservation account (formerly fund No. 214), operation | $ 90,000.00 | $ 90,000.00 |
| Salary for the head of the agency shall be paid from the general fund and shall not exceed $10,000.00 per year for each year of the biennium. Capital expenditures shall not exceed $40,665.00 for the year ending June 30, 1964; and shall not exceed $14,515.00 for the fiscal year ending June 30, 1965. | | |
| STATE PLANNING BOARD | | |
| (1) From the general fund, operation | $ 50,000.00 | $ 50,000.00 |
| Salary for the head of the agency shall not exceed $10,800.00 per year for each year of the biennium. | | |
| MONTANA STATE LIBRARY COMMISSION | | |
| (1) From the general fund, operation and capital | $ 52,994.00 | $ 52,994.00 |
| (2) From the federal and private revenue fund, library development account (formerly fund No. 104-69), operation | $ 73,006.00 | $ 73,006.00 |
| Revenues accruing to this account in excess of these estimates may be made available by approved budget amendment. Expenditures in excess of the estimates in item (2) may be made after approved budget amend- | | |



HeinOnline -- 1963 vol. II 1240 1963

ment. Salary for the head of the agency shall be paid from the general fund and shall not exceed $9,000.00 per year for each year of the biennium. Capital expenditures from the general fund shall not exceed $36,500.00 per year for each year of the biennium.

AERONAUTICS COMMISSION

| | | |
|---|---|---|
| (1) From the earmarked revenue fund, state aviation account (formerly fund No. 188), operation and capital | $348,800.00 | $342,271.00 |
| Salary for the head of the agency shall not exceed $10,000.00 per year for each year of the biennium. Capital expenditures shall not exceed $63,450.00 for the fiscal year ending June 30, 1964; and shall not exceed $79,900.00 for the fiscal year ending June 30, 1965. | | |
| (2) From the earmarked revenue fund, state aviation account (formerly fund No. 188), for construction and engineering grants | $ 41,000.00 | $ 41,000.00 |
| (3) From the revolving fund, airport construction loan account, as much as may be necessary, for construction loans. Moneys that are to be loaned to communities for airport construction shall be transferred to the revolving fund prior to disbursement. In addition to moneys received in repayment of loans, only $350,000.00 per year for each year of the biennium may be loaned to communities for airport construction. | | |
| (4) From the earmarked revenue fund, state aviation account (formerly fund No. 188), for aviation education | $ 44,000.00 | $ 44,000.00 |



HeinOnline -- 1963 vol. II 1241 1963

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|---|---|---|
| BUDGET DIRECTOR | | |
| (1) From the general fund, operation and capital | $ 32,275.00 | $ 40,000.00 |

Capital expenditures shall not exceed $1,000.00 for the biennium.

Section 4. When an agency has an appropriation from a source other than the general fund the money from such other sources shall be used, when available, before using general fund appropriations, except as otherwise provided by a specific law.

Section 5. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Approved March 11, 1963.

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## HOUSE BILL NO. 421

An Act to Appropriate Money to Montana State University, Montana School of Mines, Montana State College, The Agricultural Experiment Station, The Cooperative Agricultural Extension Service, Northern Montana College, Western Montana College of Education, Eastern Montana College of Education, Western Interstate Commission for Higher Education, Office of Executive Secretary of University of Montana and the Board of Education for Operation and Capital for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for operation of the institution to which the appropriation applies, repairs and maintenance.

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and includes the state's contribution for social security, public em-



HeinOnline -- 1963 vol. II 1242 1963

ployees' retirement, teachers' retirement, and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alterations of existing buildings are capital expenditures and are not repairs and maintenance.

(4) The term "capital" means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions, but does not include expenditures for construction or furnishing of buildings or purchase of land unless specifically authorized.

(5) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, by the board of regents.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. Each institution shall make such modifications in its administrative practices and changes in its various accounts including personal services, repairs and maintenance, utilities, travel, communications, scholarships, prizes and awards, interest, other supplies and expenses, and recharges to keep within its appropriation. It is unlawful to purchase supplies for a succeeding biennium from an appropriation contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. In addition to the amounts specifically appropriated by this act, there is appropriated to each institution all federal moneys, income from land grants and trust funds to which it is entitled, and all other moneys received from all sources.



HeinOnline -- 1963 vol. II 1243 1963

Section 4. The following moneys are appropriated for operation and capital:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| MONTANA STATE UNIVERSITY | | |
| (1) From the general fund | $2,522,698.00 | $2,998,427.00 |
| (2) From the general fund for repairs of the heating system | $ 150,000.00 | $ —0— |
| (3) From the earmarked revenue fund, university millage account (formerly fund No. 106) | $1,525,000.00 | $1,525,000.00 |
| (4) From student fees and collections deposited in the general fund | $ 931,200.00 | 5 959,143.00 |
| Revenues accruing to this appropriation in excess of these estimates may be made available by approved budget amendment, as defined in Section 1, subsection (5) of this act, provided, however, that expenditures may not exceed the total collections. | | |
| MONTANA SCHOOL OF MINES | | |
| (1) From the general fund | $ 437,237.00 | $ 477,939.00 |
| (2) From the general fund for the Cedar Creek Anticline underground water study | $ 10,000.00 | $ 10,000.00 |
| (3) From the earmarked revenue fund, university millage account (formerly fund No. 106) | $ 130,000.00 | $ 130,000.00 |
| (4) From student fees and collections deposited in the general fund | $ 84,430.00 | $ 86,230.00 |
| Revenues accruing to this appropriation in excess of these estimates may be made available by approved budget amendment, as defined in section 1, subsection (5) of this act, | | |



HeinOnline -- 1963 vol. II 1244 1963

| | | |
|---|---|---|
| provided, however, that expenditures may not exceed the total collections. | | |
| MONTANA STATE COLLEGE | | |
| (1) From the general fund | $2,490,221.00 | $2,877,628.00 |
| (2) From the earmarked revenue fund, university millage account (formerly fund No. 106) | $1,525,000.00 | $1,550,000.00 |
| (3) From student fees and collections deposited in the general fund | $ 838,900.00 | $ 871,725.00 |
| Revenues accruing to this appropriation in excess of these estimates may be made available by approved budget amendment, as defined in Section 1, subsection (5) of this act, provided, however, that expenditures may not exceed the total collections. | | |
| CO-OPERATIVE AGRICULTURAL EXTENSION SERVICE | | |
| (1) From the general fund | $ 335,000.00 | $ 370,000.00 |
| AGRICULTURAL EXPERIMENT STATION | | |
| (1) From the general fund for the main station | $ 620,394.00 | $ 694,688.00 |
| (2) From the general fund for the central Montana branch station | $ 36,963.00 | $ 39,509.00 |
| (3) From the general fund for the eastern Montana branch station | $ 43,011.00 | $ 45,441.00 |
| (4) From the general fund for the grain laboratory | $ 26,651.00 | $ 28,863.00 |
| (5) From the general fund for the Huntley branch station | $ 63,979.00 | $ 57,798.00 |
| (6) From the general fund for the north Montana branch station | $ 64,818.00 | $ 65,347.00 |



HeinOnline -- 1963 vol. II 1245 1963

| | | |
|---|---|---|
| (7) From the general fund for the northwest Montana branch station | $ 33,197.00 | $ 35,288.00 |
| (8) From the general fund for the U.S. range station | $ 1.00 | $ 17,836.00 |
| (9) From the general fund for the western Montana branch station | $ 27,696.00 | $ 29,697.00 |
| (10) From the general fund for the wool laboratory | $ 31,484.00 | $ 33,252.00 |

Moneys appropriated to the agricultural experiment station may be used for the purchase of land, subject to approval of the board of regents; provided, further, that any moneys in an earmarked account of any agricultural substation may be made available to any other agricultural substation subject to the approval of the board of regents, and repaid as prescribed by the board of regents.

NORTHERN MONTANA COLLEGE

| | | |
|---|---|---|
| (1) From the general fund | $ 305,703.00 | $ 357,132.00 |
| (2) From the earmarked revenue fund, university millage account (formerly fund No. 106) | $ 300,000.00 | $ 300,000.00 |
| (3) From student fees and collections deposited in the general fund | $ 144,755.00 | $ 149,950.00 |

Revenues accruing to this appropriation in excess of these estimates may be made available by approved budget amendment, as defined in Section 1, subsection (5) of this act, provided however, that expenditures may not exceed the total collections.



HeinOnline -- 1963 vol. II 1246 1963

| | | |
|---|---|---|
| WESTERN MONTANA COLLEGE OF EDUCATION | | |
| (1) From the general fund | $ 221,609.00 | $ 251,705.00 |
| (2) From the earmarked revenue fund, university millage account (formerly fund No. 106) | $ 220,000.00 | $ 220,000.00 |
| (3) From student fees and collections deposited in the general fund | $ 111,675.00 | $ 113,760.00 |
| Revenues accruing to this appropriation in excess of these estimates may be made available by approved budget amendment, as defined in Section 1, subsection (5) of this act, provided, however, that expenditures may not exceed the total collections. | | |
| EASTERN MONTANA COLLEGE OF EDUCATION | | |
| (1) From the general fund | $ 556,489.00 | $ 624,653.00 |
| (2) From the earmarked revenue fund, university millage account (formerly fund No. 106) | $ 575,000.00 | $ 575,000.00 |
| (3) From student fees and collections deposited in the general fund | $ 292,179.00 | $ 302,190.00 |
| Revenues accruing to this appropriation in excess of these estimates may be made available by approved budget amendment, as defined in Section 1, subsection (5) of this act, provided however, that expenditures may not exceed the total collections. | | |
| WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION | | |
| (1) From the general fund for operation | $ 11,000.00 | $ 11,000.00 |



HeinOnline -- 1963 vol. II 1247 1963

| | | |
|---|---|---|
| (2) From the general fund for student enrollment fees | $ 96,400.00 | $ 103,200.00 |
| OFFICE OF EXECUTIVE | | |
| SECRETARY OF | | |
| UNIVERSITY OF MONTANA | | |
| (1) From the general fund for operation and capital | $ 57,921.00 | $ 61,853.00 |
| (2) From the earmarked revenue fund, university millage account (formerly fund No. 106), for equalizing the travel fares of students attending the university of Montana | $ 500.00 | $ 500.00 |
| (3) From the general fund for national defense education act matching student loan funds | $ 25,000.00 | $ 25,000.00 |
| BOARD OF EDUCATION | | |
| (1) From the earmarked revenue fund, university millage account (formerly fund No. 106), for operation and capital | $ 17,694.00 | $ 17,587.00 |
| Capital expenditures shall not exceed $520.00 for the fiscal year ending June 30, 1964; and shall not exceed $240.00 for the fiscal year ending June 30, 1965. | | |

Section 5. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Approved March 11, 1963.

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## HOUSE BILL NO. 422

An Act Appropriating Money for the Purchase of Cumulative Pocket



HeinOnline -- 1963 vol. II 1248 1963

Supplements and Replacement Volume 6 of the Revised Codes of Montana, 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Two thousand nine hundred seventy-seven dollars ($2,977.00) is appropriated from the general fund for the purchase of cumulative pocket supplements and for the purchase of replacement volume 6 of the Revised Codes of Montana, 1947.

Section 2. This act shall become effective when House Bill No. 282 is enacted into law.

Approved March 11, 1963.

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## HOUSE BILL NO. 423

An Act to Appropriate Money to the Board of Examiners for Payment of Claims Relating to the Cost of Prisoner Extradition, Prisoner Transportation, State Insurance Premiums and the Commission for Uniform State Laws.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The following moneys are appropriated to the Board of Examiners for the biennium ending June 30, 1965:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| (1) From the general fund for extradiction and transportation of prisoners. | $ 60,000.00 | $ 60,000.00 |
| (2) From the general fund for fire and casualty insurance premiums on state property. | $ 100,000.00 | $ 105,000.00 |
| (3) From the earmarked revenue fund fish and game account (formerly fund No. 131) for payment of fire and casualty insurance premiums on state property. | $ 5,000.00 | $ 5,000.00 |
| (4) From the earmarked revenue fund highway account (formerly fund No. 138) for payment of | | |



HeinOnline -- 1963 vol. II 1249 1963

| | | |
|---|---|---|
| fire and casualty insurance premiums on state property. | $ 35,000.00 | $ 35,000.00 |
| (5) From the earmarked revenue fund millage account (formerly fund No. 106) for payment of fire and casualty insurance premiums on state property. | $ 90,000.00 | $ 95,000.00 |
| (6) From the earmarked revenue fund motor vehicle recording account (formerly fund No. 212) for payment of fire and casualty insurance premiums on state property. | $ 275.00 | $ 275.00 |
| (7) From the general fund for operational expense of the commission for uniform state laws. | $ 2,100.00 | $ 2,100.00 |

Section 2. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 11, 1963.

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## HOUSE BILL NO. 424

An Act Appropriating Money for the Operation of the Thirty-eighth Legislative Assembly.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. Twenty thousand dollars ($20,000) is appropriated from the general fund for the operation of the thirty-eighth legislative assembly of the state of Montana.

Section 2. This act is effective on passage and approval.

Approved March 11, 1963.

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## HOUSE BILL NO. 425

An Act to Appropriate Money to Public Schools for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The following moneys are appropriated for the biennium ending June 30, 1965:



HeinOnline -- 1963 vol. II 1250 1963

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| (1) From the general fund for payments of "state equalization aid" in accordance with the school foundation program | $10,000,000.00 | $12,000,000.00 |
| (2) From the general fund for payment of "transportation aid" in accordance with Montana school law | $ 1,100,000.00 | $ 1,150,000.00 |
| (3) From the earmarked revenue fund, state equalization aid account (formerly fund No. 217) for payments to schools, as much as necessary to fulfill the legal obligations of the school foundation program. | | |

Section 2. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 11, 1963.

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## HOUSE BILL NO. 427

An Act to Appropriate Money to the State Board of Examiners for the Reconstruction, Improvement, Remodeling, Repair, and Furnishing of the State Capitol Building of the State of Montana at Helena, Montana; and Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. In order to provide for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana, there is appropriated to the state board of examiners from the Federal and Private Revenue Fund, Capitol Building Account (formerly capitol building fund—fund No. 120) the sum of five hundred thousand dollars ($500,000) or so much thereof as may be necessary to pay lawful claims for the reconstruction, improvement, remodeling, repair and furnishing of



HeinOnline -- 1963 vol. II 1251 1963

the state capitol building of the state of Montana at Helena, Montana.

Section 2. This act shall be in full force and effect from and after its passage and approval.

Approved March 11, 1963.

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## HOUSE BILL NO. 428

An Act to Appropriate Money to Certain State Agencies for Operation, Capital and Grants and Benefits for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for the operation of the agency to which the appropriation applies, and repairs and maintenance.

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and includes the state's contribution for social security, public employees' retirement, teachers' retirement and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings accasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alteration of existing buildings are a capital expenditure and are not repairs and maintenance.

(4) The term "capital" means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions, but does not include expenditures for construction or furnishing of buildings or purchase of land unless specifically authorized.

(5) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, through the budget director.



HeinOnline -- 1963 vol. II 1252 1963

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriaiton not expended during the first fiscal year may be expended during the second fiscal year. This agency shall make such modifications in its administrative practices and changes in its various accounts including personal services, supplies and materials, communication, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation; provided, however, that money appropriated for operation cannot be transferred to capital without an approved budget amendment. It is unlawful to purchase supplies for a succeeding biennium from an appropriation contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. The following moneys are appropriated for the biennium ending June 30, 1965:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| LAW LIBRARY | | |
| (1) From the general fund for operation and capital | $ 19,290.00 | $ 19,690.00 |
| P. B. X. | | |
| (1) From the general fund for operation | $ 41,807.00 | $ 41,922.00 |
| VETERANS' WELFARE COMMISSION | | |
| (1) From the general fund for operation and capital | $ 128,630.00 | $ 129,245.00 |
| (2) From the general fund for the establishment of a Veterans' welfare field office in the Hi-Line area | $ 10,000.00 | $ 10,000.00 |
| ADJUTANT GENERAL | | |
| (1) From the general fund for operation and capital | $ 345.155.00 | $ 321,155.00 |



HeinOnline -- 1963 vol. II 1253 1963

| | | |
|---|---|---|
| Contained within the above appropriation from the general fund shall be funds for the construction of armories at Glasgow, Deer Lodge and Malta. The salary of the adjutant general shall be $9,000.00 for each year of the biennium. | | |
| (2) From the general fund for operation and capital, Civil Defense Division | $ 49,000.00 | $ 35,500.00 |
| (3) From the federal and private revenue fund, civil defense account (formerly fund No. 105-10), for operation and capital | $ 40,000.00 | $ 40,000.00 |
| Revenues received in excess of these amounts may be made available by approved budget amendment. The salary of the civil defense director shall be $6,600.00 per year for each year of the biennium. | | |

BOARD OF PARDONS

| | | |
|---|---|---|
| (1) From the general fund for operation and capital | $ 100,375.00 | $ 110.525.00 |
| Salary of the department head shall be $7,500.00 per year for the biennium. | | |

STATE HISTORICAL SOCIETY

| | | |
|---|---|---|
| (1) From the general fund for operation | $ 83,849.00 | $ 83,849.00 |
| (2) From the earmarked revenue fund, historical society account (formerly funds No. 182, No. 228, No. 207 and No. 134), for operation and capital | $ 130,500.00 | $ 130,500.00 |
| Revenue in excess of the estimate for the historical society account may be made available by approved budget amendment. | | |



HeinOnline -- 1963 vol. II 1254 1963

| | | |
|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | |
| (1) From the general fund for operation and capital | $ 219,524.00 | $ 219,904.00 |
| (2) From the earmarked revenue fund, fish and game account (formerly fund No. 131), for operation and capital | $ 15,000.00 | $ 15,000.00 |
| (3) From the earmarked revenue fund, state highway account (formerly fund No. 138), for operation and capital | $ 30,000.00 | $ 30,000.00 |
| (4) From the earmarked revenue fund, millage account (formerly fund No. 106), for operation and capital | $ 15,000.00 | $ 15,000.00 |
| (5) From the general fund for custody and maintenance of capitol buildings and grounds, operation and capital | $ 65,850.00 | $ 65,850.00 |
| (6) From the general fund for janitorial and engineering maintenance and service | $ 210,000.00 | $ 210,000.00 |
| (7) From the federal and private revenue fund, capitol building account (formerly fund No. 120) for purchase of land in capitol area | $ 15,000.00 | $ —0— |
| (8) From the federal and private revenue fund, capitol building acount( formerly fund No. 120) for repair and maintenance of capitol buildings | $ 20,000.00 | $ 20,000.00 |
| The salary of the state controller shall be $10,000.00 per year for the biennium. | | |
| REGISTRAR OF MOTOR VEHICLES | | |
| (1) From the earmarked revenue fund, motor vehicle recording | | |



HeinOnline -- 1963 vol. II 1255 1963

| | | |
|---|---|---|
| account (formerly fund No. 212), for operation and capital | $ 349.990.00 | $ 355,000.00 |
| Revenue in excess of these estimates may be made available by approved budget amendment. | | |
| COUNTY ATTORNEYS | | |
| (1) From the general fund for operation | $ 130,014.00 | $ 130,014.00 |
| DISTRICT JUDGES | | |
| (1) From the general fund for operation | $ 317,577.00 | $ 334,092.00 |
| BOARD OF HEALTH | | |
| (1) From the general fund for operation and capital | $ 407,500.00 | $ 407,500.00 |
| (2) From the federal and private revenue fund, board of health account (formerly public health U.S. aid fund No. 104-13), for operation and capital | $ 746,373.00 | $ 751,356.00 |
| Revenues received in excess of these amounts may be made available by approved budget amendment. The salary of the executive officer shall be $17,000.00 for each year of the biennium. | | |
| DEPARTMENT OF PUBLIC WELFARE | | |
| (1) From the general fund for operation, capital and welfare aid payments | $2,974,769.00 | $3,145,752.00 |
| (2) From the federal and private revenue fund, department of public welfare account (formerly funds No. 104-22, No. 104-23, No. 104-24, No. 104-25, No. 104-26, No. 104-54, No. 105-7), for operation, capital and welfare aid payments | $ 536,673.00 | $ 561,068.00 |



HeinOnline -- 1963 vol. II 1256 1963

Grant-in-aid payments shall be in the amount of $320,000.00 each year of the biennium and, provided further, that surplus funds may also be used for grant-in-aid payments. Revenue in excess of these estimates may be made available by approved budget amendment. Any funds available to the welfare department which are unexpended during the biennium ending June 30, 1963 are hereby reappropriated to the biennium ending June 30, 1965. Salary of the public welfare administrator shall be $11,500.00 per year for each year of the biennium.

LABOR AND INDUSTRY

| | | |
|---|---|---|
| (1) From the general fund for operation and capital | $ 36,824.00 | $ 34,814.00 |
| The salary of the administrator shall be $7,500 per year for the biennium | | |

THE STATE FORESTER

| | | |
|---|---|---|
| (1) From the general fund for operation and capital | $ 335,876.00 | $ 283,026.00 |
| (2) From the federal and private revenue fund, co-operative forest management account (formerly fund No. 104-41), for operation and capital | $ 19,641.00 | $ 19,730.00 |
| (3) From the earmarked revfund, fire protection account (formerly fund No. 155), for operation and capital | $ 81,526.00 | $ 81,352.00 |
| (4) From the federal and private revenue fund, forest nursery account (formerly fund No. 160), for operation and capital | $ 45,000.00 | $ 50,000.00 |
| (5) From the earmarked revenue fund, slash and brush disposal | | |



HeinOnline -- 1963 vol. II 1257 1963

| | | |
|---|---|---|
| account (formerly fund No. 156), for operation and capital | $ 294,666.00 | $ 307,137.00 |
| (6) From the earmarked revenue fund, timber stand improvement account (formerly fund No. 100), for operation and capital | $ 19,389.00 | $ 19,597.00 |
| (7) From the federal and private revenue fund, Clarke-McNary U. S. aid account (formerly fund No. 104-19), for operation and capital | $ 154,000.00 | $ 154,000.00 |
| Revenue in excess of the estimate in subsections 2, 3, 4, 5, 6 and 7 may be made available by approved budget amendment. Construction of an office building for the state forester shall not exceed $70,000.00 for the biennium ending June 30, 1965. The cost of the office building shall be taken from the general fund appropriation in subsection (1). Such building is to be constructed on state property at the site of the forest tree nursery in Missoula, Montana. | | |

"Section 4. All moneys received as indemnification for the fire loss of the food service and dormitory building at the state training school and hospital shall be deposited in the general fund.

Section 5. (1) There is appropriated from the general fund to the state training school and hospital the amount of four hundred seventy-five thousand dollars ($475,000.00) for the construction of

(a) a kitchen-food center building with employees' quarters

(b) a boys' dormitory

(c) a girls' dormitory

(2) In addition to the appropriation in sub-section (1) of this section, there is appropriated from the general fund any moneys in excess of four hundred seventy-five thousand dollars ($475,000.00) deposited in the general fund under the provisions of section 4 of this act.

Section 6. The governor shall appoint a bipartisan committee of three (3) members from each house of the legislative assembly to



HeinOnline -- 1963 vol. II 1258 1963

consult with the state agency responsible for supervising the planning and construction of the buildings authorized in section 5 of this act. The amount of one thousand dollars ($1,000.00) is appropriated for the payment of mileage and actual expenses for members of this committee.

Section 7. Sections 4 through 7 of this act are effective on passage and approval."

Section 8. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Approved March 13, 1963.

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## HOUSE BILL NO. 429

An Act to Appropriate Money to the State Highway Commission the State Advertising Agency, State Parks, and Fish and Game Commission for Operation and Capital for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for the operation of the agency for which the appropriation applies, and repairs and maintenance.

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and includes the state's contribution for social security, public employees' retirement, teachers' retirement and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alterations of existing buildings are capital expenditures and are not repairs and maintenance.



HeinOnline -- 1963 vol. II 1259 1963

(4) The term "capital" means:

(a) those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year.

(b) includes the cost of acquisition of lands, payments to contractors, supplies for construction of highways, buildings, building sites and sand and gravel pits.

Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions.

(5) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, through the budget director.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. These agencies shall make such modifications in administrative practices and changes in the various accounts including personal services, supplies and materials, communications, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation; provided, however, that money appropriated for operation cannot be transferred to capital without an approved budget amendment. It is unlawful to purchase supplies for a succeeding biennium from an appropriation contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. The following moneys are appropriated for the biennium ending June 30, 1965:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| STATE HIGHWAY COMMISSION | | |
| (1) From the earmarked revenue fund, state highway account (formerly fund No. 138), for operation and capital | $23,845,025.00 | $24,333,661.00 |



HeinOnline -- 1963 vol. II 1260 1963

| | | |
|---|---|---|
| (a) For the purpose of acquiring lands adjacent to the Capitol grounds | $ 75,000.00 | |
| (2) From the federal and private revenue fund, state highway account (formerly fund No. 104-10), for operation and capital | $46,050,000.00 | $46,150,000.00 |
| Revenues accruing to these funds in excess of these estimates may be made available by an approved budget amendment. Salary for the head of the department shall not exceed $15,840.00 per year for each year of the biennium to be paid from the earmarked revenue fund. | | |
| STATE ADVERTISING DEPARTMENT OF THE STATE HIGHWAY COMMISSION | | |
| (1) From the earmarked revenue fund, state highway account (formerly fund No. 138), for operation | $ 126,000.00 | $ 126,000.00 |
| STATE PARKS DIVISION | | |
| (1) From the general fund for operation and capital | $ 140,300.00 | $ 143,500.00 |
| (2) From the federal and private revenue fund, Canyon Ferry park account (formerly funds No. 186 and No. 059), for development of Canyon Ferry and Tiber state parks, operation and capital | $ 8,100.00 | $ 8,500.00 |
| Revenues acruing to these funds in excess of these estimates may be made available by approved budget amendment. Salary for the head of the agency shall not exceed $8,640.00 per year for each year of the biennium, to be paid from the general fund. | | |



HeinOnline -- 1963 vol. II 1261 1963

FISH AND GAME COMMISSION

| | | |
|---|---|---|
| (1) From the earmarked revenue fund, fish and game account (formerly fund No. 131), for operation and capital | $ 2,868,224.00 | $ 2,925,321.00 |

Land acquisition for game and wildlife ranges shall not exceed $100,000.00 for each year of the biennium; land acquisition for fishing access shall not exceed $50,000.00 for each year of the biennium. The land acquisition program of the fish and game commission shall be conducted in accordance with the following provisions:

(a) The Montana Fish and Game Commission shall give all possible consideration in future land acquisitions to the possible effects upon the tax structure and economy of the counties in which such acquisitions may be proposed, by making such investigations as may be appropriate, by giving adequate notice of intent to purchase substantial holdings, both by publicity and paid advertising, by consulting with the board of commissioners and other county officials, and, where advisable, by holding a public hearing in the community closest to the proposed purchase for the purpose of determining the views of the citizens of that county; and

(b) The Montana Fish and Game Commission shall exercise due care in making land acquisitions, and shall refrain from making any purchases which would have a substantial adverse economic effect upon the county in which located.

Section 4. If any section, subsection, sentence, clause or phrase



HeinOnline -- 1963 vol. II 1262 1963

of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Approved March 11, 1963.

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## HOUSE BILL NO. 430

An Act to Appropriate Money to Certain State Institutions for Operation and Capital for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for operation of the institution to which the appropriation applies, repairs and maintenance.

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and includes the state's contribution for social security, public employees' retirement, teachers' retirement, and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alterations of existing buildings are capital expenditures and are not repairs and maintenance.

(4) The term "capital" means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions, but does not include expenditures for construction or furnishing of buildings or purchase of land unless specifically authorized.

(5) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, through the budget director.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year



HeinOnline -- 1963 vol. II 1263 1963

for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. Each institution shall make such modifications in its administrative practices and changes in its various accounts including personal services, supplies and materials, communications, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation. It is unlawful to purchase supplies for a succeeding biennium from an appropriation contained in this act without the approval of the budget director. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. Unless otherwise provided in this act, all moneys received or collected from any source whatsoever by the institutions named in this act shall be deposited in the state treasury and credited to the proper fund as provided by section 79-601, R. C. M. 1947.

Section 4. The salary of the chief administrator of each institution shall be determined by the appointing authority in accordance with statutory provisions and, in no case, shall the salary determined exceed the amount set out in this act for any specific agency.

Section 5. In addition to the amounts specifically appropriated by this act, there is appropriated to each institution all federal moneys, income from land grants and trust funds to which it is entitled, subject to statutory provisions, obligations of outstanding bond issues, and approved budget amendment.

Section 6. On or before June 15, 1963 the budget director shall deliver to the controller a certified listing of all capital items approved for purchase during the biennium. Provided further that such list shall exclude all work orders and capital repair projects, and to further provide that the *director of public institutions* shall have authority to add or delete any capital items if a change requested by any institution meets with his approval.

Section 7. The following moneys are appropriated for the biennium ending June 30, 1965:

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| STATE CHILDREN'S CENTER | | |
| (1) From the general fund for operation and capital | $ 406,459.00 | $ 409,202.00 |



HeinOnline -- 1963 vol. II 1264 1963

Salary for the superintendent shall not exceed $9,000.00 per year for each year of the biennium. Capital expenditures shall not exceed $4,000.00 for the fiscal year ending June 30, 1964; and shall not exceed $3,100.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6.

STATE HOSPITAL

| | | |
|---|---|---|
| (1) From the general fund for operation and capital | $3,311,045.00 | $3,387,705.00 |
| (2) From the general fund for construction and furnishing of physicians' housing | $ 60,000.00 | $ —0— |
| (3) From the general fund for construction and furnishing of male employees' dormitory | $ —0— | $ 150,000.00 |
| (4) From fee collections deposited in the general fund in excess of $300,000.00 per year, subject to approved budget amendment | $ 100,000.00 | $ 100,000.00 |

Salary of the superintendent shall be paid from the general fund and shall not exceed $17,000.00 per year for each year of the biennium. Capital expenditures from the general fund shall not exceed $38,958.00 for the fiscal year ending June 30, 1964; and shall not exceed $46,258.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6.

| | | |
|---|---|---|
| (5) From the federal and private revenue fund, mental hygiene account (formerly fund No. 104-33), for operation | $ 63,500.00 | $ 63,500.00 |
| (6) From the federal and private revenue fund, mental hygiene | | |



HeinOnline -- 1963 vol. II 1265 1963

| | | |
|---|---|---|
| account (formerly fund No. 104-33), for capital | $ 1,500.00 | $ 1,500.00 |
| Revenues accruing to the federal and private revenue fund, mental hygiene account, in excess of these estimates may be made available upon an approved budget amendment. | | |
| MONTANA CENTER | | |
| FOR THE AGED | | |
| (1) From the general fund for operation and capital | $ 166,300.00 | $ 178,225.00 |
| (2) From the general fund for construction of a garage and storage building | $ 3,000.00 | $ —0— |
| Salary for the superintendent shall not exceed $7,000.00 for the fiscal year ending June 30, 1964; and shall not exceed $7,500.00 for the fiscal year ending June 30, 1965. Capital expenditures shall not exceed $1,500.00 for the fiscal year ending June 30, 1964; and shall not exceed $2,500.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6. | | |
| SCHOOL FOR DEAF | | |
| AND BLIND | | |
| (1) From the general fund for operation and capital | $ 214,300.00 | $ 215,300.00 |
| Salary of the superintendent shall be paid from the general fund and shall not exceed $10,000.00 per year for each year of the biennium. Capital expenditures shall not exceed $1,200.00 per year for each year of the biennium; and capital expenditures shall be limited to only those items approved in section 6. | | |



HeinOnline -- 1963 vol. II 1266 1963

STATE TUBERCULOSIS

SANITARIUM

| | | |
|---|---|---|
| (1) From the general fund for operation and capital | $1,074,030.00 | $1,100,617.00 |
| Salary of the superintendent shall be paid from the general fund and shall not exceed $15,000.00 per year for each year of the biennium. Capital expenditures from the general fund shall not exceed $5,250.00 for the fiscal year ending June 30, 1964; and shall not exceed $7,750.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6. | | |
| (2) From the federal and private revenue fund, T. B. sanitarium vocational testing account (formerly fund No. 105-9), for operation | $ 7,200.00 | $ 7,200.00 |
| Revenues accruing to this account in excess of these estimates may be made available by approved budget amendment. | | |

MONTANA VETERANS' HOME

| | | |
|---|---|---|
| (1) From the general fund for operation and capital | $ 87,900.00 | $ 67,100.00 |
| Salary for the commandant shall be paid from the general fund and shall not exceed $6,000.00 per year for each year of the biennium. Capital expenditures from the general fund shall not exceed $17,800.00 for the biennium; and capital expenditures shall be limited to only those items approved in section 6. | | |
| (2) From the federal and private revenue fund, soldiers' home U. S. aid account (formerly fund No. 104-15), for operation | $ 45,000.00 | $ 45,000.00 |



HeinOnline -- 1963 vol. II 1267 1963

| | | |
|---|---|---|
| Revenues accruing to this account in excess of these estimates may be made available by approved budget amendment. | | |
| STATE PRISON | | |
| (1) From the general fund for operation and capital | $1,353,285.00 | $1,388,190.00 |
| (2) From the general fund for custody officers-state parks | $ 15,000.00 | $ 15,000.00 |
| (2a) From the general fund for the construction of an institutional dairy center | | $ 50,000.00 |
| Salary of the warden shall be paid from the general fund and shall not exceed $10,000.00 per year for each year of the biennium. Capital expenditures from the general fund shall not exceed $41,525.00 for the fiscal year ending June 30, 1964; and shall not exceed $13,950.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6. | | |
| (3) From the earmarked revenue fund, motor vehicle recording account (formerly fund No. 212), to defray expense borne by the state prison in administering the law relating to motor vehicle registration, operation | $ 50,000.00 | $ 50,000.00 |
| (4) From the earmarked revenue fund, prison industries account (formerly fund No. 099), for operation and livestock | $ 40,000.00 | $ 40,000.00 |
| In addition to the above appropriation, there is appropriated all collections from the prison industries program; however, expenditures in excess of these estimates shall only | | |



HeinOnline -- 1963 vol. II 1268 1963

be made upon approved budget amendment.

| | | |
|---|---|---|
| STATE INDUSTRIAL SCHOOL | | |
| (1) From the general fund for operation and capital | $ 550,000.00 | $ 567,500.00 |
| (2) From the general fund for addition to the maximum security cottage | $ 53,000.00 | $ —0— |
| Salary of the superintendent shall be paid from the general fund and shall not exceed $10,000.00 per year for each year of the biennium. Capital expenditures from the general fund shall not exceed $52,370.00 for the fiscal year ending June 30, 1964; and shall not exceed $55,050.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6. | | |
| VOCATIONAL SCHOOL FOR GIRLS | | |
| (1) From the general fund for operation and capital | $ 225,500.00 | $ 223,500.00 |
| Salary of the superintendent shall not exceed $7,500.00 per year for each year of the biennium. Capital expenditures shall not exceed $2,500.00 per year for each year of the biennium; and capital expenditures shall be limited to only those items approved in section 6. | | |
| STATE TRAINING SCHOOL | | |
| (1) From the general fund for operation and capital | $1,154,000.00 | $1,161,000.00 |



HeinOnline -- 1963 vol. II 1269 1963

| | | |
|---|---|---|
| (2) From the general fund for construction and equipment of milking parlor and dairy processing plant | $ 23,000.00 | $ 26,000.00 |
| (3) From the general fund for land improvement | $ 4,000.00 | $ 4,000.00 |

Salary of the superintendent shall not exceed $10,000.00 per year for each year of the biennium. Capital expenditures shall not exceed $11,050.00 for the fiscal year ending June 30, 1964; and shall not exceed $6,100.00 for the fiscal year ending June 30, 1965; and capital expenditures shall be limited to only those items approved in section 6.

Section 9. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Approved March 11, 1963.

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## HOUSE BILL NO. 431

An Act to Appropriate Money to Certain State Agencies for Operation, Capital, Grants and Benefits for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) The term "operation" means all expenditures for personal services, all ordinary and necessary expenditures for the operation of the agency to which the appropriation applies, and repairs and maintenance.

(2) The term "personal services" means all salaries and wages of full time, part time and temporary employees of the state and



HeinOnline -- 1963 vol. II 1270 1963

includes the state's contribution for social security, public employees' retirement, teachers' retirement and industrial accident insurance.

(3) The term "repairs and maintenance" means repairs to equipment and the cost of replacement of parts of equipment, repairs to buildings and to the plumbing, heating, wiring and air conditioning systems in buildings occasioned by ordinary wear and tear or by physical damage, and the cost of painting the exteriors and interiors of buildings. Major alterations of existing buildings are capital expenditures and are not repairs and maintenance.

(4) The term "capital" means those items which do not lose their identity, which are adaptable to continuing use and have a useful life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets, as well as new acquisitions, but does not include expenditures for construction or furnishing of buildings or purchase of land unless specifically authorized.

(5) The term "grants and benefits" means expenditures for grants to political subdivisions, associations, or individuals, and includes, but is not limited to retirement and disability compensation, and unemployment benefits.

(6) The term "approved budget amendment" means approval by the state's chief budget officer upon submission to him, through the budget director.

Section 2. The appropriations contained in this act intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made; however, in cases of necessity, an appropriation not expended during the first fiscal year may be expended during the second fiscal year. Each board, office or commission shall make such modifications in its administrative practices and changes in its various accounts including personal services, supplies and materials, communication, utilities, travel, contracted services, food, special fees, and repairs and maintenance to keep within its appropriation; provided, however, that money appropriated for operation cannot be transferred to capital without an approved budget amendment. It is unlawful to purchase supplies for a succeeding biennium from an approprition contained in this act. Balances of any appropriation unexpended at the end of the second fiscal year, except amounts encumbered by purchase order, shall revert to the funds from which they were appropriated.

Section 3. The following moneys are appropriated for the biennium ending June 30, 1965:



HeinOnline -- 1963 vol. II 1271 1963

| | For the Fiscal Year Ending June 30, 1964 | For the Fiscal Year Ending June 30, 1965 |
|---|---|---|
| STATE BOARD OF EXAMINERS | | |
| (1) From the general fund for operation and capital | $ 51,765.00 | $ 52,550.00 |
| Salary for the head of the agency shall not exceed $8,600.00 per year for each year of the biennium. Capital expenditures shall not exceed $815.00 for the biennium. Board of examiners shall make adjustments in expenditures of this office in accordance with legislation effective as of July 1, 1963. | | |
| (2) From the general fund for maintenance of the Poplar armory, operation | $ 1,200.00 | $ 1,200.00 |
| From the general fund for the maintenance contract of the House of Representatives roll call machine | $ 1,500.00 | $ 1,500.00 |
| STATE EXAMINER | | |
| (1) From the general fund for operation and capital | $ 249,355.00 | $ 258,016.00 |
| Capital expenditures shall not exceed $845.00 for the fiscal year ending June 30, 1964; and shall not exceed $832.00 for the fiscal year ending June 30, 1965. | | |
| (2) From the revolving fund, state examiners account, all fees for special examinations of state agencies are appropriated. | | |
| (3) From the earmarked revenue fund, state examiners account, all fees for special examinations of offices other than state agencies are appropriated. | | |



HeinOnline -- 1963 vol. II 1272 1963

THE JOINT MERIT SYSTEM

(1) From the earmarked revenue fund, merit system account (formerly fund No. 208), for operation and capital $ 28,705.00 $ 29,390.00

Capital expenditures shall not exceed $300.00 for the biennium ending June 30, 1965. Revenues accruing to the account (1) above in excess of these estimates may be made available by approved budget amendment.

THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

(1) From the earmarked revenue fund, public employees' retirement account (formerly fund No. 122), for operation and capital $ 104,790.00 $ 98,040.00

Capital expenditures shall not exceed $13,725.00 for the fiscal year ending June 30, 1964; and shall not exceed $4,500.00 for the fiscal year ending June 30, 1965.

(2) From the earmarked revenue fund, social security division account (formerly fund No. 147), for operation and capital $ 38,465.00 $ 33,965.00

Capital expenditures shall not exceed $5,190.00 for the fiscal year ending June 30, 1964; and shall not exceed $190.00 for the fiscal year ending June 30, 1965.

Revenues accruing to accounts named in (1) and (2) above in excess of these estimates may be made available by approved budget amendment.

THE UNEMPLOYMENT COMPENSATION COMMISSION

(1) From the federal and pri-



HeinOnline -- 1963 vol. II 1273 1963

| | | |
|---|---|---|
| vate revenue fund, unemployment administration account (formerly fund No. 104-28), for operation, debt retirement and interest | $2,291,650.00 | $2,291,650.00 |
| Revenue accruing to account (1) above in excess of these estimates may be made available by approved budget amendment. | | |
| (2) From the general fund, for the purpose of participating in the federal government manpower development training act for the period July 1, 1964 through June 30, 1965 | $ —0— | $ 20,000.00 |
| LIQUOR CONTROL BOARD | | |
| (1) From the earmarked revenue fund, liquor control board account, for salaries and wages | $1,450,000.00 | $1,500,000.00 |
| (2) From the earmarked revenue fund, liquor control board account, for operation and capital | $ 689,157.00 | $ 728,208.00 |
| Revenues in excess of these estimates for operation and capital may be made available by approved budget amendment. | | |
| BOARD OF EQUALIZATION | | |
| (1) From the general fund, for operation and capital | $ 476,334.00 | $ 474,604.00 |
| (2) From the earmarked revenue fund, highway account (formerly fund No. 138), for operation and capital | $ 143,275.00 | $ 139,125.00 |
| (3) From the earmarked revenue fund, public school equalization account (formerly fund No. 217), for operation and capital | $ 88,772.00 | $ 88,362.00 |
| (4) From the general fund for the operation of a special division | | |



HeinOnline -- 1963 vol. II 1274 1963

| | | |
|---|---|---|
| to employ two (2) competent persons to examine and investigate income and license returns filed by all persons, partnerships, corporations or others having or having had contracts with the state of Montana or any department or agency thereof, or any federal agency which has contracts for work or services to be performed within the state of Montana | $ 17,500.00 | $ 17,500.00 |
| Capital expenditures shall not exceed $9,349.00 from the general fund for the biennium and may not exceed $5,200.00 from the earmarked revenue fund, highway account for the biennium. | | |
| TEACHERS RETIREMENT SYSTEM | | |
| (1) From the earmarked revenue fund, teachers retirement administration account (formerly teachers retirement fund), for operation and capital | $ 47,496.00 | $ 52,296.00 |
| Revenue in excess of these estimates may be made available by approved amendment. | | |

Section 4. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Approved March 13, 1963.

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## HOUSE BILL NO. 432

An Act Appropriating to the Federal and Private Revenue Fund, Capital Building Account, All Moneys Paid into the General Fund



HeinOnline -- 1963 vol. II 1275 1963

by State Agencies as Rent or Charges for Occupying Office Space in State Buildings.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. There is appropriated for the biennium ending June 30, 1965 to the federal and private revenue fund, capitol building account (formerly fund No. 120) all moneys paid into the general fund by state agencies as rents or charges for occupying office space in state buildings in the capitol area.

Approved March 11, 1963.

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## HOUSE BILL NO. 433

An Act to Appropriate Money to the Department of Public Institutions for Operation and Capital for the Biennium Ending June 30, 1965.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. The following moneys are appropriated for the biennium ending June 30, 1965:

| | For the Fiscal Year ending June 30, 1964 | For the Fiscal Year ending June 30, 1965 |
|---|---|---|
| DEPARTMENT OF | | |
| PUBLIC INSTITUTIONS | | |
| (1) From the general fund for operation andn capital | $ 70,000,00 | $ 70,000.00 |

Approved March 11, 1963.

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## HOUSE JOINT MEMORIAL NO. 1

A Joint Memorial of the Senate and House of Representatives of the State of Montana to the President of the United States and the Montana Congressional Delegation Requesting Action to Place the United States Lumber Industry on an Equitable Basis With Foreign Competitors and Require the Marking of Imported Lumber to Show the Country of Origin.

WHEREAS, there is no shortage of timber for the production of lumber and related items in the United States, and



HeinOnline -- 1963 vol. II 1276 1963

WHEREAS, there is a need to increase the cut from over-mature forests to prevent excessive loss from decay, disease and other causes, and

WHEREAS, United States lumber manufacturing firms pay the highest wages and provide working conditions equal to or better than similar firms in other countries, and

WHEREAS, lumber manufacturing firms in the United States are losing their home markets to firms in foreign countries, especially Canada, which have advantages such as depreciated currency, low stumpage rates, non-competitive bidding, less costly and restrictive forest practices, lower wage rates, high tariff rates on lumber shipped to Canada and low charter rates for coast-wise and intercoastal shipping, and

WHEREAS, lumber imports from Canada are increasing yearly at an alarming rate and now constitute about one-sixth of the annual consumption of lumber in the United States, and

WHEREAS, unemployment in the lumber industry of the United States is increasing with resultant loss of wages to the workers, loss of taxes and income to taxing bodies and communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the State of Montana urges the President and the Congress of the United States to give immediate attention to and request action necessary to place the lumber industry of the United States on an equitable and competitive basis with foreign manufacturers through the use of a quota system or other means, including the requirement that imported lumber be marked to show the country of origin, to the end that domestic manufacturers are not placed at a disadvantage with resultant loss of markets, reduction of employment, loss of taxes and deterioration of communities, and

BE IT FURTHER RESOLVED, that the secretary of state be instructed to send copies of this Memorial to the President and the Vice President of the United States, the Speaker of the House of Representatives of the Congress, and to the Honorable Mike Mansfield and Lee Metcalf, Senators from the Stat eof Montana, and the Honorable Arnold Olsen and James Battin, Congressmen from the State of Montana.

Approved February 2, 1963.



HeinOnline -- 1963 vol. II 1277 1963

## HOUSE JOINT MEMORIAL NO. 2

A Joint Memorial of the Senate and House of Rrepresentatives of the State of Montana to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States; to the Honorable Mike Mansfield and Honorable Lee Metcalf, Senators from the State of Montana; to the Honorable James Battin and the Honorable Arnold H. Olsen, Representatives from the State of Montana; to the Secretary of the Interior and to the United States Bureau of Reclamation, urging the Passage of Legislation to Amend the Reclamation Act and Any Other Laws or Rules, to Waive the Application of the Land Limitation Clause in the State of Montana.

WHEREAS, the Reclamation Act of 1902 applied primarily to public lands; and

WHEREAS, in an effort to limit the application of this act to family sized farms, the maximum holding of land in a single ownership was fixed at 160 acres or less; and

WHEREAS, the present reclamation laws requiring acreage limitations are based on outmoded, half-century-old farming methods of the walking plow and horse team days; and

WHEREAS, the present farm acreage that one operator can handle is two to five times the amount that could be handled at the time the reclamation laws were passed in 1902; and

WHEREAS, the gross income has not kept pace with the total acres that one operator can handle; and

WHEREAS, present acreage limitations will not permit farmers in the state of Montana to own sufficient crop acreage to give them full employment and a gross income sufficient to maintain the standard of living generally provided in farm areas of the humid or sub-humid regions; and

WHEREAS, since the passage of the original Reclamation Act in 1902, it has been amended to include furnishing supplemental waters to lands already irrigated; and

WHEREAS, in order to establish a realistic family sized farm in Montana, the acreage allowed in a single holding may be determined by the Bureau of Reclamation.

NOW, THEREFORE, BE IT RESOLVED, by the Legislative Assembly of the state of Montana as follows:



HeinOnline -- 1963 vol. II 1278 1963

1. That the land limitation provisions of the Reclamation Act, and any other laws and rules, be waived and not applied in the state of Montana; recognize the difference in types of farming and crop production and provide for flexibility in acreage found to be needed for farm units.

2. That such legislation provide for relaxation of the acreage limitation provisions as to supplemental water supply projects for established farming areas.

3. That any legislation amending the land limitation provisions shall not be retroactively applied to areas now exempt from such land limitation provisions.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the secretary of state of the state of Montana; to the President of the Senate of the United States; to the Speaker of the House of Representatives of the United States; and to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from Montana; and the Honorable Arnold H. Olsen and the Honorable James Battin, Representatives in the Congress from Montana; to the Secretary of the Interior; and to the United States Bureau of Reclamation.

Approved March 9, 1963.

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## HOUSE JOINT MEMORIAL NO. 5

A Joint Memorial of the Senate and House of Representatives of the State of Montana, to the Montana Congressional Delegation, Opposing the Breaking Up of the Military Post at Fort Missoula, Montana.

WHEREAS, Fort Missoula is the oldest and only active army post in the state of Montana, having been continuously in existence and periodically garrisoned with troops since 1877, when it was established; and

WHEREAS, Fort Missoula is a historical landmark in the state of Montana, possessing several old historic buildings, excellent permanent buildings, a well-kept parade ground, and other facilities, reminiscent of a type of military establishment associated with pioneer and frontier Montana days, once common to many areas of the country, but few of which remain in as well-preserved condition as Fort Missoula; and



HeinOnline -- 1963 vol. II 1279 1963

WHEREAS, the remaining facilities at Fort Missoula comprising about five hundred sixty-eight acres are of substantial value to the state generally and to the area in which located, to other governmental agencies which make use of certain particular facilities, and to over six hundred members of the reserve components of the armed forces of the United States who regularly meet and train there and who have no other comparable close-in training facilities available; and

WHEREAS, Fort Missoula and its facilities have been of substantial local service to the United States Armed Forces during every military conflict from the time of its establishment, that further such use in time of national emergency is possible and practical, and that such facilities should be maintained as part of the national reserve of real property assets readily available in time of war; and

WHEREAS, it is now seriously proposed by the Department of Defense and the United States Army that the military post at Fort Missoula be broken up into five separate and disconnected parcels and that the remaining lands and facilities be disposed of with the result that Fort Missoula as it is now historically known and preserved would, to all intents and purposes, practically lose its identity:

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Assembly of the state of Montana strongly opposes and disapproves the proposal to break up and reduce the land area of Fort Missoula as a military reservation and urges and requests the Montana congressional delegation to prepare, introduce and support legislation preserving and protecting the present facilities of Fort Missoula, as an historical and cultural landmark of the state, as an essential and valuable close-in training area for members of the reserve components of all the armed forces, and as a valuable asset to be held in reserve for possible use in event of future national emergency; and

BE IT FURTHER RESOLVED, that the Secretary of State be instructed to send copies of this memorial to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana, and the Honorable James Battin and Arnold Olsen, congressmen from the state of Montana, and to the chairman of the Armed Services



HeinOnline -- 1963 vol. II 1280 1963

Committees of the House of Representatives and Senate of the United States Congress.

Approved March 1, 1963.

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## SENATE SUBSTITUTE FOR HOUSE JOINT MEMORIAL NO. 6

A Joint Memorial of the Senate and House of Representatives of the State of Montana to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States; to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from the State of Montana; to the Honorable James Battin and the Honorable Arthur H. Olsen, Representatives from the State of Montana; to the Secretary of Agriculture and to the United States Forest Service; to the Secretary of the Interior and to the Bureau of Land Management, Urging the Passage of Legislation so that Counties Will Henceforth Receive a Percentage of the Actual Gross Income Instead of a Percentage of Net Income of the Moneys Received from Lands Administered by the Forest Service and Bureau of Land Management.

WHEREAS, the Congress of the United States has recognized that it is the obligation of the government of the United States to make payments to counties in lieu of taxes for lands administered by the forest service and bureau of land management; and

WHEREAS, the Forest Service Act of 1908 (16USC500) specified that twenty-five per cent (25%) of all moneys received from each national forest during any fiscal year should be paid at the end of the year by the secretary of the treasury to the state in which the national forest is situated, to be expended as the state legislature may prescribe for the benefit of the public schools and the public roads of the county or counties in which the national forest is situated; and

WHEREAS, several laws specify that a certain percentage of the money received from grazing fees on lands administered by the bureau of land management shall be allocated to the counties in which the land is located; and

WHEREAS, amendments to the laws have allowed the forest service and the bureau of land management to deduct many items from the gross income of the land which they administer, and that



HeinOnline -- 1963 vol. II 1281 1963

particularly in the last ten (10) years the amount of the deductions has increased at an alarming rate; and

WHEREAS, this has caused a reduction in the amounts paid in lieu of taxes to the point where now many counties with federal lands administered by the forest service and bureau of land management are receiving less than one-quarter the amount in lieu of taxes that is received in taxes from private lands.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President and the Congress of the United States are requested to amend the present laws so that the counties will henceforth receive a percentage of the actual gross rather than net income of the moneys received from lands administered by the forest service and bureau of land management.

BE IT FURTHER RESOLVED, that certified copies of this memorial shall be forwarded by the secretary of state to the President of the United States, to each member of the Montana congressional delegation, to the secretary of agriculture, and to the secretary of the interior.

Approved March 2, 1963.

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## HOUSE JOINT MEMORIAL NO. 10

A Joint Memorial of the House of Representatives and Senate of the State of Montana to the President of the United States; to the Honorable Robert McNamara, Secretary of Defense of the United States and to the Honorable Fred Korth, Secretary of the Navy of the United States Requesting That the Silver Service Which Now Is on the U. S. S. Helena, which Silver Service Was Originally Given by the People of the State of Montana to the United States Navy for the United States Heavy Cruiser Montana and Thereafter to the U. S. S. Helena, Be Returned to Montana and Placed in the Historical Museum Until Such Time as the Navy Has a New Ship Representing Montana on Which Such Silver Service May Be Used.

WHEREAS, the Tenth Legislative Assembly of the State of Montana in 1907 passed an act appropriating six thousand dollars ($6,000) and authorizing a commission of three men to contract for the manufacture of a silver service for the United States Cruiser Montana, and



HeinOnline -- 1963 vol. II 1282 1963

WHEREAS, Chief Justice Theodore Brantly of the Montana Supreme Court, State Senator W. H. Haviland, of Silver Bow County and W. W. Cheely, a well-known newspaperman of the time were appointed as the commission and caused to be manufactured a beautiful and ornate silver service, containing sixteen hundred ounces of silver and comprising nineteen pieces of silverware into which were crafted a pattern of the foliage and flower of the Bitterroot, the state flower of Montana, the State Capitol Building, the Great Seal of the State of Montana, the Seal of the United States Navy, the United States Steamship Montana and scenes illustrative of the history, geography, and industries of the State of Montana, and

WHEREAS, the silver service was presented to the newly commissioned cruiser Montana on the prophetic date of November 11, 1908, and

WHEREAS, the silver service has been continuously in commissioned service ever since that date having accompanied some eight thousand eight hundred (8,800) doughboys of World War I across the Atlantic; having observed the action at Pearl Harbor, Hawaii on December 7, 1941; having been spared burial at sea with the heroic second cruiser, the U. S. S. Helena which was sunk by enemy torpedoes in the battle of Kula Gulf, Solomon Islands on July 7, 1943; having served with attack cruiser 75, the present United States Steamship Helena as part of Task Force 95 in the Korean conflict; having accompanied President Dwight D. Eisenhower on his pre-inaugural trip to Korea; and having served its nation well and honorably for more than fifty-four (54) years, and

WHEREAS, the U. S. S. Helena has now been, or is about to be, retired from active service and no ship of the United States presently represents the State of Montana in the United States Navy, and

WHEREAS, it is proper and desirable that said silver service be returned to the State of Montana for display and safekeeping in the Museum of the Montana Historical Society in Helena, Montana, so that Montana may see and appreciate its beauty and be inspired by the inscription on one piece of such silver service which reads:

"In the long vista of the years to roll
Let me not see our country's honor fade,
O let me see our land retain her soul,
Her pride, her freedom, and not freedom's shade."

and,



• HeinOnline -- 1963 vol. II 1283 1963

WHEREAS, it would be of great and lasting interest and benefit to the citizens of Montana to have deposited and displayed in the historical museum the multitude of historical memoranda relating the glorious record of the U. S. S. Helena and the U. S. S. Montana in the history of Our Country.

NOW, THEREFORE, in the name of the people of the State of Montana, the Honorable Tim Babcock, Governor of Montana; the Thirty-eighth Legislative Assembly of the State of Montana; all of the Veterans Organizations of the State of Montana; the Montana Council of the Navy League of the United States; the Regular Navy in Montana; the Naval Reserve Units of Montana; and all Montana citizens and particularly those who served their nation honorably in the service of the United States Navy in peace and war, be it resolved:

That petition to the Honorable Fred Korth, Secretary of the United States Navy go forth from this state requesting the return of the silver service to Montana and deposited in the Museum of the Historical Society of Montana situated on the Capitol grounds in Helena, Montana, to await its return to active duty should another vessel representing this state again serve this country in the United States Navy. That is be requested that the display cases in which such silver service has been kept aboard the U. S. S. Helena, together with plaques, citations, battle records, pictures of the Captains of the U. S. S. Montana and the two U. S. S. Helenas, and other historical memoranda depicting the glorious history of the U. S. S. Montana and the U. S. S. Helena also be deposited in the Montana Historical Museum.

The Thirty-Eighth Legislative Assembly of the State of Montana directs the Secretary of State of the State of Montana to send a copy of this Memorial to the President of the United States, the Honorable Robert McNamara, Secretary of Defense of the United States and the Honorable Fred Korth, Secretary of the Navy of the United States.

Approved February 21, 1963.

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## HOUSE JOINT MEMORIAL NO. 11

A Joint Memorial of the Senate and House of Representatives of the State of Montana Requesting That the Voluntary Participation Provisions Be Retained in Future Agricultural Production



HeinOnline -- 1963 vol. II 1284 1963

Control Measures on the Production of Corn for Silage, or the Production of Barley and Oats in Montana.

WHEREAS, it appears that the Eighty-eighth Congress will consider a proposal providing for an extension of the present limitations on feed grain production to the 1964 crops, and

WHEREAS, such limitations on feed grains would drastically curtail the effort which is now being made to expand and encourage the feeding of livestock in Montana, and

WHEREAS, Montana produces thousands of feeder cattle, sheep, and hogs, and the finishing of this livestock is being encouraged by livestock growers, agricultural research and extension services, and by commercial interests, and

WHEREAS, the excellent quality of barley and oats produced in Montana is in great demand for seed in other states and for export, and

WHEREAS, it is vitally important that the state of Montana encourage all forms of economic expansion for the general welfare of all citizens of the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana requests the President of the United States, the Secretary of Agriculture, and the Montana congressional delegation to retain in future agricultural production control measures, the voluntary participation provisions with reference to the production of corn for silage, or the production of barley and oats in Montana.

BE IT FURTHER RESOLVED that the secretary of state be instructed to send copies of this memorial to the Honorable John F. Kennedy, President of the United States, to the Honorable Orville Freeman, Secretary of Agriculture, to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from Montana, to the Honorable James F. Battin and the Honorable Arnold H. Olsen, Congressmen from Montana, to the chairman of the Senate Committee on Agriculture, and to the chairman of the House Committee on Agriculture.

Approved March 5, 1963.



HeinOnline -- 1963 vol. II 1285 1963

## HOUSE JOINT MEMORIAL NO. 12

A Joint Memorial of the House of Representatives and the Senate of the State of Montana to the Honorable Congress of the United States, to the President of the United States; to the Honorable Douglas Dillon, Secretary of the Treasury of the United States; to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from the State of Montana; to the Honorable James F. Battin and the Honorable Arnold H. Olsen, Representatives from the State of Montana, Requesting Legislation Authorizing the Department of the Treasury of the United States to Design and Mint and Distribute Through the State Treasurer of the State of Montana Five Hundred Thousand (500,000) Silver Dollars in Commemoration of the Montana Territorial Centennial and Thanksgiving Centennial.

WHEREAS, the Territory of Montana was created by an Act of Congress signed by President Abraham Lincoln on May 26, 1864; and

WHEREAS, in the same year, 1864, President Lincoln proclaimed that Thanksgiving Day should be a National Holiday; and

WHEREAS, there has been established a Montana Territorial Centennial Commission for the purpose of planning, preparing and promoting the celebration of the One Hundredth Anniversary of the creation of the Montana Territory, and

WHEREAS, it is entirely appropriate that the One Hundredth Anniversary of the establishment of the Montana Territory by proclamation of President Abraham Lincoln and the first Thanksgiving Day proclamation by the same great President in the same year be noted and celebrated throughout the Nation as well as in the State of Montana, and

WHEREAS, the striking of a memorial silver dollar commemorating these great events is in keeping with the spirit of these momentous occasions, and

WHEREAS, the circulation of such commemorative silver dollars through the State Treasury of the State of Montana will be of great benefit in promoting and inspiring the people of the State of Montana and of the Nation in entering into the spirit of celebration of the One Hundredth Anniversary of these great events:

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENSTATIVES AND THE SENATE OF THE STATE OF MONTANA:

That the Congress of the United States be requested to authorize



HeinOnline -- 1963 vol. II 1286 1963

and direct the Department of the Treasury of the United States to mint five hundred thousand (500,000) special silver dollars designed and crafted on one side a likeness of President Lincoln and on the other side a design with the words, "Montana Centennial," together with a replica of the Great Seal of the State of Montana or other appropriate emblem and "Thanksgiving Centennial" and that said silver dollars as legal tender be delivered to the Treasurer of the State of Montana in exchange for a like sum of money for distribution by the State Treasurer of the State of Montana through the Montana Territorial Centennial Commission or other appropriate agency of the Montana Territorial Centennial Celebration to take place in 1964.

BE IT FURTHER RESOLVED, that copies of this memorial be sent by the Secretary of State of the State of Montana, to the President of the United States, the Honorable President of the United States Senate, the Honorable Speaker of the House of Representatives of the Congress, the Secretary of the Trasury Douglas Dillon, the Honorable Mike Mansfield and Lee Metcalf, Senators from the State of Montana, and the Honorable James F. Battin and the Honorable Arnold H. Olsen, Congressmen from the State of Montana.

Approved February 15, 1963.

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## HOUSE JOINT MEMORIAL NO. 15

A Joint Memorial to the Congress and Executive Branch of the Federal Government Requesting That a Public Hearing Be Held in the County Seat of Each County Affected Before Any Final Decision Is Made to Establish Dams, Wildlife Preserves, Migratory Bird Refuges or Parks.

WHEREAS, when dams, wildlife preserves, migratory bird refuges or parks are created by the Federal Government, the same often requires and includes the taking of large areas of private lands, and federal and state lands leased and used by private individuals; that these lands when so taken may be restricted so as not to allow livestock grazing, timber harvesting, and other multiple uses, and by reason thereof the use is restricted or denied to the former owner or lessee; that this results in detriment to the operator, as well as economic jeopardy to nearby communities when the acreage is large and the communities are dependent on livestock or other products derived from multiple uses.



HeinOnline -- 1963 vol. II 1287 1963

WHEREAS, said land often contain water historically used for livestock watering and other related purposes, and said water is necessary during periods of drouth and may be the only water supply available within many miles for ordinary use, and

WHEREAS, the loss of hayland not only would result in a drastic devaluation of the remaining ranch land, but would in many cases force the rancher to cease operations, and

WHEREAS, present multiple use operations provide a continuing source of income to the communities and a needed tax base for local government, and

WHEREAS, it is illogical that persons far removed from the area should arrive at an administrative decision or enact a decision into law without complete information on how a change would affect the local area, and

WHEREAS, the federal government should not take land for said purposes when communities or entire counties will suffer undue harm or economic injury.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress and executive branch of the federal government be requested to hold public hearings in the county seat of each county affected whenever a dam, wildlife preserve, migratory bird refuge, or park is proposed to afford those persons most vitally affected a chance to make their desires known before any administrative decision is made or law passed.

BE IT FURTHER RESOLVED, that copies of this memorial be forwarded by the secretary of the state of Montana to the Honorable John F. Kennedy, president of the United States, to the Honorable Mike J. Mansfield and the Honorable Lee Metcalf, United States senators from Montana, to the Honorable James F. Battin and the Honorable Arnold H. Olsen, congressmen from Montana, to the president of the senate and speaker of the house of representatvies, to the secretary of the interior, to the secretary of agriculture, and to the chief of the army corps of engineers of the United States.

Approved March 11, 1963.

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## SENATE JOINT MEMORIAL NO. 1

A Joint Memorial of the House of Representatives and the Senate



HeinOnline -- 1963 vol. II 1288 1963

of the State of Montana to the Interstate Commerce Commission: Urging That the Economic Interests of the State of Montana Be Protected by Interstate Commerce Commission Action Preserving the Present Competitive Rail Freight Rate Structure Applying to Westbound Shipments of Grain From the State of Montana and Urging Administrative and Congressional Action to Insure Freedom From Arbitrary Efforts by Barge Carriers and Other Unregulated Carriers to Force Upon Montana Shippers Artificial and Unjust Levels of Freight Rates.

WHEREAS, as the result of efforts by shippers and railroad carriers serving the state of Montana reductions in railroad freight rates on grain moving westward from Montana points were made effective by Interstate Commerce Commission order on October 13, 1961, and again on September 13, 1962, the effect of which was to reduce the cost of delivering grain to market on the west coast, an increasingly important market to Montana producers and processors and

WHEREAS, these reductions were widely supported by grain farmers and members of the grain trade in this state both because of the saving in transportation costs and because maintenance of competitive rate scales is vitally important to insure the proper economic balance with other grain producing areas and

WHEREAS, an Examiner of the Interstate Commerce Commission has recommended to the Commission that the current rate levels on grain shipments as established by Interstate Commerce Commission order be increased to the previous rate levels and

WHEREAS, a return to previous rate levels in the areas affected would cause both economic loss to shippers and would create a serious hazard to the continued existence of local elevators dependent upon competitively priced railroad services and

WHEREAS, the Examiner's recommendation is based upon a contention that the reduced rates have compelled barge and truck lines to haul grain at lower rates and reduced revenues, disregarding the savings which have accrued to Montana shippers and the competitive necessity for such reductions and

WHEREAS, the Montana Grain Growers Association, the Farmers Union Grain Terminal Association, the Montana Farm Bureau Federation, the Montana Railroad and Public Service Commission, and many individual shippers, growers and processors of grain and grain products have intervened in support of the railroad industry in asking the Interstate Commerce Commission to reject the



HeinOnline -- 1963 vol. II 1289 1963

Examiner's recommendations in ICC Docket No. 33571 and to maintain in full force and effect the ICC orders reducing the railroad rates on westbound grain and

WHEREAS, it is vitally necessary to Montana's economy, of which the grain production and processing industry is a substantial and permanent portion, that administrative and congressional action be taken to give Montana shippers, producers and processors assurance that they will not be subjected to arbitrary and unjust efforts by barge and other unregulated carriers to compel rate levels which are injurious to Montana's basic economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Interstate Commerce Commission reject in its entirety the recommendation of its Examiner in ICC Docket No. 33571 and continue its orders of October 13, 1961 and September 13, 1962, thereby maintaining the present rate level on such grain shipments.

BE IT FURTHER RESOLVED that copies of this memorial be forwarded by the Secretary of State of the State of Montana to the Chairman of the Interstate Commerce Commission of the United States.

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## SENATE JOINT MEMORIAL NO. 3

A Joint Memorial of the Senate and House of Representatives of the State of Montana to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States; to the Honorable Mike Mansfield and Honorable Lee Metcalf, Senators From the State of Montana; to the Honorable James Battin and the Honorable Arnold H. Olsen, Representatives From the State of Montana; to the Secretary of the Interior and to the United States Bureau of Reclamation, Urging the Passage of Legislation to Amend the Reclamation Act and Any Other Laws or Rules, to Waive the Application of the Land Limitation Clause in the Area Above Canyon Ferry Dam in the State of Montana.

WHEREAS, the Reclamation Act of 1902 applied primarily to public lands; and

WHEREAS, in an effort to limit the application of this act to family sized farms, the maximum holding of land in a single ownership was fixed at 160 acres or less; and



HeinOnline -- 1963 vol. II 1290 1963

WHEREAS, the present reclamation laws requiring acreage limitations are based on outmoded, half-century-old farming methods of the walking plow and horse team days; and

WHEREAS, the present farm acreage that one man can handle is two to five times the amount that could be handled at the time the reclamation laws were passed in 1902; and

WHEREAS, the gross income has not kept pace with the total acres that one man can handle; and

WHEREAS, the area above Canyon Ferry Reservoir on the Missouri River is at high elevations which limits the crops to stock raising purposes, requiring large acreages for a balanced economy; and

WHEREAS, present acreage limitations will not permit farmers in the area above Canyon Ferry to own sufficient crop acreage to give them full employment and a gross income sufficient to maintain the standard of living generally provided in farm areas of the humid or sub-humid regions; and

WHEREAS, since the passage of the original Reclamation Act in 1902, it has been amended to include furnishing supplemental waters to lands already irrigated; and

WHEREAS, in order to establish a realistic family sized farm in this area, the acreage allowed in a single holding often must be greater than 160 acres;

NOW, THEREFORE, BE IT RESOLVED, by the Legislative Assembly of the State of Montana as follows:

1. That the land limitation provisions of the Reclamation Act, and any other laws and rules, be waived and not applied in the area above Canyon Ferry in the State of Montana; recognize the difference in types of farming and crop production and provide for flexibility in acreage found to be needed for farm units.

2. That such legislation provide for relaxation of the acreage limitation provisions as to supplemental water supply projects for established farming areas.

3. That any legislation amending the land limitation provisions shall not be retroactively applied to areas now exempt from such land limitation provisions.

4. That the acreage allowed in a single holding may be determined by the Bureau of Reclamation.



HeinOnline -- 1963 vol. II 1291 1963

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State of the State of Montana; to the President of the Senate of the United States; to the Speaker of the House of Representatives of the United States; and to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from Montana; and the Honorable Arnold H. Olsen and the Honorable James Battin, Representatives in the Congress from Montana; to the Secretary of the Interior; and to the United States Bureau of Reclamation.

Approved March 5, 1963.

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## SENATE JOINT MEMORIAL NO. 5

A Joint Memorial of the Senate and House of Representatives of the State of Montana, to the Montana Congressional Delegation, and the Bureau of Public Roads, Department of Commerce of the United States of America Requesting That the United States of America Through the Bureau of Public Roads, Department of Commerce Participate in the Cost as Authorized by the Laws of the United States, in the Replacement of Adequate Pipes Underneath Any State Federal Aided Highway or Interstate Highway Used for Irrigation, and the Replacement of other Irrigation Facilities Destroyed or Disturbed by the Construction of Said Highways.

WHEREAS, a water right is recognized by law as a property right in the state of Montana, and

WHEREAS, water rights and irrigation are essential to the stability and growth of the economy of Montana and of the utmost benefit and importance to its residents and once disturbed or destroyed can never be replaced like other property, and

WHEREAS, in the construction and maintenance of highways the state highway department of the state of Montana desires to preserve water rights whenever possible and to negotiate with the property owner in order to provide adequate irrigation pipes underneath any state federal aided or interstate highway and provide adequate irrigation facilities and structures to replace those damaged or destroyed by the construction and maintenance of said highways, and

WHEREAS, it appears to be the policy of the Bureau of Public Roads, Department of Commerce of the United States of America



HeinOnline -- 1963 vol. II 1292 1963

to have the state of Montana appropriate water rights, irrigation pipes and irrigation facilities damaged by the construction of state federal aided and interstate highways rather than to preserve such water rights whenever possible and to replace irrigation pipes under said highways and to replace irrigation facilities damaged by said highways so that the lands not actually taken for the said highways may be susceptible to irrigation as before said highways were constructed, and

WHEREAS, it apears to be the policy of the Bureau of Public Roads, Department of Commerce of the United States of America not to participate with the state of Montana in the cost of replacing adequate irrigation pipes beneath said highways or to replace irrigation facilities destroyed or damaged by the construction of state highways because said irrigation pipes and irrigation facilities may be secured by purchase or by proceedings in condemnation, and

WHEREAS, such policy of the Bureau of Public Roads, Department of Commerce of the United States if pursued will cause irreparable damage and injury to the owners of water rights in Montana and to the irrigable lands of Montana and to the general welfare of the state of Montana and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Assembly of the state of Montana recognizes the public interest involved in preserving state water rights by placing adequate irrigation pipes underneath the state federal aided and interstate highways, as well as replacing irrigation facilities damaged or destroyed by construction of said highways, and

BE IT FURTHER RESOLVED, that the Legislative Assembly of the state of Montana disapproves of the policy of the Bureau of Public Roads, Department of Commerce of the United States as heretofore set forth relating to water rights irrigation pipes and irrigation facilities, and urges said Bureau of Public Roads to cooperate with and participate in the preservation of water rights whenever possible and to participate in the cost of replacing irrigation pipes underneath any state federal aided or interstate highways and the replacement of irrigation facilities damaged by the construction of said highways.

BE IT FURTHER RESOLVED, that the secretary of state be instructed to send copies of this memorial to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana,



HeinOnline -- 1963 vol. II 1293 1963

and the Honorable Arnold Olsen and James Battin, Congressmen from the state of Montana, to the Secretary of Commerce, and to the Commissioner, Bureau of Public Roads.

Approved March 2, 1963.

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## SENATE JOINT MEMORIAL NO. 6

A Joint Memorial of the Senate and House of Representatives of the State of Montana, to the Montana Congressional Delegation, to the United States Secretary of Commerce and to the Federal Bureau of Public Roads Administrator, Urging That Necessary Steps Be Taken to Introduce Legislation to Amend a Federal Law Relating to Highways, to Permit a State to Build Additional Primary System Mileage When Seventy-Five (75) Per Cent of a State's Primary System Is Completed and Maintained, Instead of Ninty (90) Per Cent As Presently Required.

WHEREAS, Section 103 of Title 23 of the United States Code Annotated requires that the primary highway system shall not exceed seven (7) per cent of the total highway mileage of a state, and

WHEREAS, when ninety (90) per cent of the primary system of of state is completed and maintained, said state may increase its primary mileage to eight (8) per cent of the total state mileage, and

WHEREAS, the state of Montana has not reached the required ninety (90) per cent but needs an increase in primary road mileage because of the large area to be served by highways in Montana, and

WHEREAS, an increase in primary mileage would correct existing inequities in various counties, and

WHEREAS, many Montana counties would have greatly increased travel if the proper primary highway mileage were available, and

WHEREAS, when primary highways were designated in past years, many Montana areas which had a minor volume of traffic now have enough traffic to warrant primary highway designation, and

WHEREAS, an increase in primary highway mileage would greatly benefit the state of Montana,



HeinOnline -- 1963 vol. II 1294 1963

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That necessary steps be taken by the Montana congressional delegation, in cooperation with federal officials to introduce legislation to amend Section 103 of Title 23 of the United States Code Annotated, relating to highways, to permit a state to have additional primary highway system mileage when seventy-five (75) per cent of said state's primary highway system is completed and maintained instead of ninety (90) per cent which is presently required, and

BE IT FURTHER RESOLVED, that the secretary of state be instructed to send copies of this memorial to the Honorable Michael J. Mansfield and Lee Metcalf, Senators from the state of Montana; to the Honorable Arnold H. Olsen and James F. Battin, Congressmen from the state of Montana; to Luther H. Hodges, United States secretary of commerce; and to Rex M. Whitton, federal bureau of public roads administrator.

Approved March 2, 1963.

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## SENATE JOINT MEMORIAL NO. 7

A Joint Memorial of the Senate and House of Representatives of the State of Montana, to the Montana Congressional Delegation and to the Honorable Secretary of the Interior of the United States, Urging That Action Be Taken by the United States to Implement the Provisions of Chapter 104, Montana Session Laws of 1959, to Enable the Beneficiaries of That Legislation to Obtain the Benefits Intended Thereby.

WHEREAS, by Chapter 104, Montana Session Laws of 1959, this legislative assembly provided as follows, in material part

". . . when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars ($100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.", and

WHEREAS, the act referred to was the old age assistance act, and the Montana Department of Public Welfare has advised the aged, blind, disabled and needy Indian people that the said depart-



HeinOnline -- 1963 vol. II 1295 1963

ment is unable to afford this protection to them due to existing federal regulation, and

WHEREAS, the beneficial purpose intended by this legislative assembly in the passage of the said Chapter 104 has been and is being lost to those elderly, blind, disabled and needy Indian people, and much hardship has resulted and the need for such benefit still exists;

NOW THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the federal government take whatever appropriate steps are required to enable these elderly, blind, disabled and needy members of our community to realize the benefit intended for them in the said Chapter 104, Montana Session Laws of 1959, and that such steps be taken without further delay.

BE IT FURTHER RESOLVED, that the legislative assembly of the state of Montana urges the Montana congressional delegation to support this memorial and to that end the Secretary of State is instructed to send copies of this memorial to the Honorable Stewart Udall, Secretary of the Interior, and to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana, and the Honorable James Battin and Arnold H. Olsen, Congressmen from the state of Montana.

Approved February 27, 1963.

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## SENATE JOINT MEMORIAL NO. 9

A Joint Memorial of the Senate and House of Representatives Requesting that the Federal Portion of Cost on Federal Aid Primary Highways and Secondary Highways Be Increased from About Fifty-seven Percent to Seventy Percent.

WHEREAS, in recognition of the heavy interstate traffic on highways built and maintained by the various states, the federal government now contributes fifty percent of the total costs of construction on highways designated as federal aid primary highways, and

WHEREAS, in recognition of the additional financial burden which would be placed on the various states having large areas of land owned by the federal government, an additional payment is



HeinOnline -- 1963 vol. II 1296 1963

made, in the case of Montana about seven percent, to compensate for the federal lands, and

WHEREAS, having a large area, sparse population, and being a "bridge" state for interstate traffic, Montana highways contribute a great deal to the welfare and pleasure of the entire nation, and

WHEREAS, due to these conditions, the citizens of Montana must make very high per capita contributions to build and maintain this system, and

WHEREAS, the additional seven percent contribution now made by the federal government for federal aid primary highways and secondary highways is entirely inadequate to cover the costs of construction and maintenance borne by Montana as a result of heavy interstate traffic.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of Montana hereby respectfully requests that Congress take action to increase the additional payment made to Montana for federal aid primary highways from seven to twenty percent.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this memorial to the President of the United States, to the Secretary of the Senate and Clerk of the House of Representatives of the United States Congress, to the Secretary of Commerce, to the Commissioner of the Bureau of Public Roads, to each member of the Montana congressional delegation, and to each member of the Montana Highway Commission.

Approved March 2, 1963.

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## HOUSE JOINT RESOLUTION NO. 1

A Joint Resolution of the Senate and the House of Representatives of the State of Montana, Ratifying the Proposed Amendment to the Constitution of the United States Relating to the Qualifications of Electors.

WHEREAS, the eighty-seventh congress of the United States of America, at its second session, in both houses, by a constitutional majority of two-thirds thereof, has made the following proposition



HeinOnline -- 1963 vol. II 1297 1963

to amend the constitution of the United States of America in the following words, to-wit:

"JOINT RESOLUTION

"Resolved by the senate and the house of representatives of the United States of America in congress assembled (two-thirds of each house concurring therein), that the following article is hereby proposed as an amendment to the constitution of the United States, which shall be valid to all intents and purposes as part of the constitution only if ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission by the congress:

"Article

"Section 1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or repesentative in congess, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

"Section 2. The congress shall have power to enforce this article by appropriate legislation."

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA, THE SENATE CONCURRING, that the said proposed amendment to the constitution of the United States of America, be and the same is hereby ratified; and

BE IT FURTHER RESOLVED, that certified copies of this resolution shall be forwarded by the secretary of state to the administrator of general services, Washington, D. C., to the president of the senate, and to the speaker of the house of representatives of the congress of the United States.

Approved February 2, 1963.

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## HOUSE JOINT RESOLUTION NO. 6

A Joint Resolution of the Senate and House of Representatives Recognizing the Contribution of the Late Governor Donald G. Nutter to the State of Montana, and Designating the Trophy Hall in the Veterans and Pioneers Memorial Building in Helena to be



HeinOnline -- 1963 vol. II 1298 1963

Hereinafter Known As the Donald G. Nutter Memorial Trophy Hall.

WHEREAS the Veterans and Pioneers Memorial Building in Helena has been established and dedicated by the people of the state of Montana in memory of the contributions to the state of Montana by the pioneers who converted a raw territory into a sovereign state, and the citizens of that state who as veterans of several wars and armed conflicts have helped to protect and preserve our sovereign state; and

WHEREAS the Trophy Hall in the Veterans and Pioneers Memorial Building has been set aside and established as a suitable repository for trophies and mementoes which recall and symbolize the contribution of these citizens to our state; and

WHEREAS the Trophy Hall was dedicated on the 20th day of January, 1962, as one of the last public acts of Donald G. Nutter, as Governor of Montana, who contributed a sincerity and purpose to the occasion by fitting and patriotic remarks, and

WHEREAS Governor Nutter was an honored veteran of combat service with the armed forces of the United States during World War II, having served as a heavy bomber pilot and commander, in the rank of Captain of the United States Air Force; and

WHEREAS the late Governor Nutter met with an untimely and tragic death only five days later, on the 25th day of January, 1962, when his presence and contribution to the dedication ceremonies were fresh in the minds of all citizens of Montana; and

WHEREAS it is fitting and proper that the contributions of our conscientious and devoted public officials be recognized by a suitable memorial, to ever remind our citizens that no man can serve a greater cause than that of his state and his country, and that no man should lay down his life in vain for either;

NOW THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENATIVES OF THE STATE OF MONTANA:

That the Trophy Hall of the Veterans and Pioneers Memorial Building in the city of Helena be designated and hereinafter known as the Donald G. Nutter Memorial Trophy Hall, in commemoration of the service to the state of Montana by the late Governor Donald G. Nutter, who laid down his life in the service of the state on January 25, 1962; and

BE IT FURTHER RESOLVED that the board of examiners of the state of Montana procure and have installed in the Donald G.



HeinOnline -- 1963 vol. II 1299 1963

Nutter Memorial Trophy Hall a bronze plaque, of suitable size and inscription, and bearing a likeness of the late Governor Nutter, including the date of his birth and death, the dates of his service to his country as a member of the armed forces, and the dates of his service to the state as its governor.

Approved February 26, 1963.

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## HOUSE JOINT RESOLUTION NO. 7

A Joint Resolution of the Senate and House of Representatives Requesting a Thorough Review of Policy and Procedures as Affecting Game Management in the National Parks With Special Emphasis on the Present Problem of the Yellowstone National Park Elk Herd.

WHEREAS, the area designated by Yellowstone National Park authorities as range for the "Northern Yellowstone Elk Herd" must be protected for future enjoyment of this nation, and

WHEREAS, range condition surveys as conducted by the Yellowstone Park Service indicate that a certain range capacity should be maintained, and

WHEREAS, the Yellowstone Park authorities initiated this promake an accurate wintering census, and

WHEREAS, with the combined cooperation and help of neighboring state game departments, the Yellowstone Park Service can maintain the elk herd at a desired level, and

WHEREAS, the present policy by Yellowstone Park authorities of reducing the elk by direct ranger control has caused serious misunderstanding between the Park Service and the general public, and

WHEREAS, the Yellowstone Park authorities initiated this program of direct elk reduction by ranger control without first holding public meetings with the public, and

WHEREAS, the state of Montana has developed an elk transplanting policy which takes in consideration the private landowners, sportsmen, as well as federal and state agencies, and

WHEREAS, the state of Montana is developing a management program to make possible a sportsmanlike harvest of elk, yet encourages the migratory habits of the elk, and



HeinOnline -- 1963 vol. II 1300 1963

WHEREAS, the Secretary of the Interior has appointed a special committee to study the game management problem in national parks, and

WHEREAS, communities in some states have been adversely affected by the present Yellowstone National Park policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana urges the President and Congress of the United States to give immediate attention to the Yellowstone National Park elk management program and requests the Secretary of the Interior and the National Park Service to review their present policy, and

BE IT FURTHER RESOLVED, that as the first objective, as many elk as can be handled on an annual basis be trapped for transplanting purposes in our several states, and

BE IT FURTHER RESOLVED, that as the second objective, every effort be made to restore the traditional winter migratory pattern of the "Northern Yellowstone Elk Herd" for hunting in Montana and other states, and

BE IT FURTHER RESOLVED, that as the third objective, the Yellowstone National Park Service be encouraged to study the feasibility of reseeding depleted ranges to provide natural food for the elk herd, and

BE IT FURTHER RESOLVED, that as the last resort, public hunting be considered as a further management measure under the rigid control and authority of the Park Service, and

BE IT FURTHER RESOLVED, that the Secretary of State be instructed to send copies of this resolution to the Honorable John F. Kennedy, President of the United States, to the Honorable senators, congressmen, governor and to the fish and game department from the state of Montana, to the Secretary of the Interior, to the Director of the National Park Service, to the Superintendent of Yellowstone National Park, and to the Montana Fish and Game Commission.

Approved February 21, 1963.

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## HOUSE JOINT RESOLUTION NO. 9

A Joint Resolution of the Senate and House of Representatives Requesting the Legislative Council to Conduct a Comprehensive



HeinOnline -- 1963 vol. II 1301 1963

Study of the Statutes and Practices of Requiring Fidelity Bonds for Public Officials in Montana and Report the Findings of That Study Together with Recommendations for Improvements to the Thirty-Ninth Legislative Assembly.

WHEREAS, at the present time there are at least one hundred seventy-five sections of the Montana code relating to fidelity bonds for public officials, and

WHEREAS, in many cases the amount of the bond now required bears little or no relationship to the financial responsibility of the public official, and

WHEREAS, a study conducted in other states with similar bonding provisions to those found in Montana concluded that the bonding provisions were complicated, confused, in many cases failed to provide adequate protection, and in addition were excessively costly to the state, and

WHEREAS, it is very probable that Montana bonding provisions contain many of these same defects, and

WHEREAS, a comprehensive revision of bonding laws would probably simplify procedures, result in better protection, and save a significant amount of money, and

WHEREAS, it is not feasible for the Legislative Assembly to conduct a study of this scope during the short biennial session.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council is hereby requested to conduct a comprehensive study of the fidelity bonding requirements contained in Montana laws together with the actual procedures employed in bonding public officials.

BE IT FURTHER RESOLVED, that the Legislative Council submit a comprehensive report of this study to the Thirty-Ninth Legislative Assembly, together with recommendations, and proposed legislation where necessary, for improvements in the Montana bonding laws and procedures.

Approved March 1, 1963.

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## HOUSE JOINT RESOLUTION NO. 12

A Joint Resolution of the Senate and House of Representatives Directing the State Board of Education, Ex Officio Regents of



HeinOnline -- 1963 vol. II 1302 1963

the University of Montana, to Conduct a Study of the Feasibility and Desirability of changing the Names of the Various Units of the University of Montana.

WHEREAS, during the thirty-eighth legislative assembly several bills were introduced to change the name of units of the university of Montana, and

WHEREAS, the introduction of these measures is an indication of some disagreement regarding what the name of each unit should be, and

WHEREAS, at the present time some confusion exists regarding the validity of these various points of view, and

WHEREAS, it is the duty of the legislative assembly to determine the functions and names of the various units of the university of Montana, and

WHEREAS, the exercise of this legislative authority in making any change would have far-reaching results.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state board of education, ex officio regents of the university of Montana, is hereby directed to conduct a comprehensive study of the feasibility and desirability of changing the names of the various units of the university of Montana and to consult with the presidents of the various units in the conduct of this study, and compile a list of names which have been decided upon as satisfactory to each of the various units.

BE IT FURTHER RESOLVED, that the board submit a written report of this study together with recommendations for legislative action, if any, to the thirty-ninth legislative assembly.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the governor, and to each member of the state board of education, ex officio regents of the university of Montana.

Approved March 9, 1963.

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## HOUSE JOINT RESOLUTION NO. 13

A Joint Resolution of the Senate and House of Representatives Petitioning the Congress of the United States to Call a Convention



HeinOnline -- 1963 vol. II 1303 1963

for the Purpose of Amending the Constitution to Provide for the Election of the President and Vice President in a Manner Fair and Just to the People of the United States Unless Congress Shall Have Sooner Submitted Such an Amendment.

WHEREAS, under the constitution of the United States presidential and vice presidential electors in the several states are now elected on a statewide basis, and each state is entitled to as many electors as it has senators and representatives in congress, and

WHEREAS, the presidential and vicepresidential electors who receive a plurality of the popular vote in a particular state become entitled to cast the total number of electoral votes allocated to that state irrespective of how many votes may have been cast for electors of the opposition candidates, and

WHEREAS, this method of electing the president and vice president is unfair and unjust in that it does not reflect the minority votes cast, and

WHEREAS, the need for a change has been recognized by members of congress on numerous occasions through the introduciton of various proposals to change the electoral college system by amending the constitution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That application is hereby made to congress under article V of the constitution of the United States to call a convention to propose an article of amendment to the constitution providing for a fair and just division of the electoral votes within the states in the election of the president and vice president.

BE IT FURTHER RESOLVED, that if and when congress shall have proposed such an article of amendment this application for a convention shall be deemed withdrawn and shall no longer have any force and effect.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the president of the senate and speaker of the house of representatives of congress, to each member of the Montana congressional delegation, and to the legislatures of each of the several states.

Approved March 11, 1963.



HeinOnline -- 1963 vol. II 1304 1963

## HOUSE JOINT RESOLUTION NO. 14

A Joint Resolution of the Senate and House of Representatives Commending the Excellent Job of Refurbishing the Furniture of the Senate and House Done at Montana State Prison.

WHEREAS, House Bill No. 465 of the 1961 session made provision for the refurbishing of the furniture in the Senate and House chambers and lobbies, and

WHEREAS, this furniture was refurbished at the Montana State Prison by the prisoners, and

WHEREAS, the results of this program are excellent, the workmanship of high quality, and the project has been completed at a cost most economical to the citizens of the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Assembly hereby expresses its appreciation to the staff and prisoners of Montana State Prison for the excellent work done in refurbishing the furniture of the Senate and House chambers and lobbies, and that the commendable job done has not only increased the life and utility of the furniture, but also greatly enhanced the appearance of the legislative chambers and lobbies.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send a copy of this resolution to the Governor, to each member of the State Board of Prison Commissioners, and to the warden of Montana State Prison.

Approved March 2, 1963.

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## HOUSE JOINT RESOLUTION NO. 16

A Joint Resolution of the Senate and House of Representatives Requesting that the Legislative Council Study the Property Classification Laws of Montana, Compare These Laws with Those of Other States, and Report Its Findings and Recommendations, Together with Any Necessary Legislation, to the Thirty-Ninth Legislative Assembly.

WHEREAS, in 1919 the Montana legislative assembly enacted a property classification law which differentiates among broad classes of real and personal property by means of unequal rates of taxation,



HeinOnline -- 1963 vol. II 1305 1963

WHEREAS, this law has been amended by seven separate legislative assemblies since its enactment,

WHEREAS, Montana is now one of five states with a comprehensive property classification law,

WHEREAS, in its 1960 report entitled "Property Taxation in Montana," the legislative council reported that "the various classes are not necessarily based on any consistent principle of discrimination," and that "the existence of the law is a temptation to interest groups to reduce their property tax load by securing a more favorable classification from the legislature,"

WHEREAS, the legislative council further stated in its report that "a future legislative assembly should seriously consider the whole question of the classification law."

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to study Montana's property classification law, and the classification laws of other states, to determine whether Montana's law is equitable, and if so, whether its administration is in fact resulting in equitable taxation,

BE IT FURTHER RESOLVED, that the legislative council report its findings and recommendations, together with any necessary legislation, to the thirty-ninth legislative assembly.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to each member of the state board of equalization and to the executive director of the legislative council.

Approved March 11, 1963.

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## HOUSE JOINT RESOLUTION NO. 17

A Joint Resolution of the Senate and House of Representatives Requesting That the Legislative Council Conduct a Study of the Feasibility of Administratively Consolidating the Retirement Systems of all Public Employees in Montana.

WHEREAS, at the present time there are a number of retirement systems in Montana for public employees including the public employees retirement system, highway patrol retirement system,



HeinOnline -- 1963 vol. II 1306 1963

teachers' retirement system, and separate systems for firemen and policemen, and

WHEREAS, each plan is somewhat different from the others, containing different stipulations regarding the conditions and benefits received, and

WHEREAS, on the state level alone there are three independent agencies responsible for administering retirement systems, and

WHEREAS, the legislative assembly now has under consideration a bill creating an additional retirement system for fish and game wardens, which if enacted, will be administered by an independent board, and

WHEREAS, the numerous systems make an understanding of the entire scope of the program difficult, complicated, and also result in many requests of the legislative assembly to adjust the plans to make them equitable, and

WHEREAS, it is probable that administrative consolidation of these different retirement systems would make possible a more efficient use of personnel and machines and would result in savings to the state and the persons receiving benefits under the various plans, and

WHEREAS, such administrative consolidation could be accomplished without changing the distinctive features of the various plans and without interfering with the integrity of the various retirement funds.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is hereby directed to conduct a comprehensive study of the retirement systems for public employees in Montana to determine the feasibility and desirability of administrative consolidation of the systems.

BE IT FURTHER RESOLVED, that the legislative council is directed to submit a written report of its findings together with recommendations for improvement to the thirty-ninth legislative assembly.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the governor, to the board of administration of the public employees' retirement system, to the Montana highway patrolmen's retirement board,



HeinOnline -- 1963 vol. II 1307 1963

to the teachers' retirement system retirement board, to the Montana state game wardens' retirement board, to the Montana municipal league for transmittal to the municipalities which have retirement systems for firemen and policemen, and to the executive director of the Montana legislative council.

Approved March 5, 1963.

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## HOUSE JOINT RESOLUTION NO. 18

A Resolution of the Senate and House of Representatives Expressing the Gratitude of All Citizens to All the Persons Who Have Given so Generously of Their Time and Material Means to Aid and Assist Rick Hutton and His Parents.

WHEREAS, Rick Hutton, a student at Billings senior high school, suffered a tragic injury during a football game between Billings senior and Billings west high schools on Semptember 29, 1962, and

WHEREAS, this fine young man has been confined to St. Vincent's Hospital since incurring this serious injury, and

WHEREAS, groups from the high schools in the state, service clubs, other fine groups such as the Carrolleers of Carroll College, friends of Rick Hutton, and particularily, those splendid citizens who have organized a group to aid, both spiritually and materially, Rick Hutton and his parents, are certainly persons and groups of the highest character and motives and justly merit the admiration of all citizens of the state, and

WHEREAS, all Montanans can be justly proud of the noble aims and humanitarian works which these persons are now accomplishing.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the senate and house of representatives, on behalf of all citizens of the state, wish to express their pride, admiration, and gratitude to all those persons who have given aid and comfort to Rick Hutton and his parents.

BE IT FURTHER RESOLVED, that the senate and house of representatives hereby extend the hope that the persons who are aiding Rick Hutton are most successful in their endeavors.



HeinOnline -- 1963 vol. II 1308 1963

BE IT FURTHER RESOLVED, that the senate and house of representatives hereby expresses its sympathy to the family of Rick Hutton and its admiration for the strength of spirit and character with which they have met this tragic occurrence.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the parents of Rick Hutton, to the superintendents of Billings senior and Billings west high schools, and to the executive secretary of the Montana high school association.

Approved March 11, 1963.

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## HOUSE JOINT RESOLUTION NO. 21

A Joint Resolution of the Senate and House of Representatives Directing the State Board of Equalization to Report to the Thirty-ninth Legislative Assembly the Status of the Reclassification and Reappraisal Program, the Status of Property Tax Equalization, and Its Recommendations for Any Further Legislation, and Requesting the Assistance of the Legislative Council in the Preparation of such Legislation.

WHEREAS, the special committee on classification and appraisal has recommended certain legislation relating to the completion of the reclassification and reappraisal of real property required by chapter 191 of the laws of 1957, and to the equalization of property taxes in Montana, and

WHEREAS, experience in the operation of these laws may indicate the need for modifications or further legislation to secure the desired result of fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state board of equalization is directed to report to the thirty-ninth legislative assembly the status of the reclassification and reappraisal program and the status of intracounty and intercounty property tax equalization. The board shall further report its recommendations for legislation or amendments of existing law necessary to secure the uniform and permanent implementation of the property tax equalization program, including, but not limited



HeinOnline -- 1963 vol. II 1309 1963

to, its recommendations as to the proportion of true value to be taken as assessed value; any recommended adjustments of taxing limitations, millage limitations, bonding limitations, salary levels, and other taxing or spending limitations related to taxable value; and any recommended changes in the dates and sequence of property tax assessment, equalization, levy, budgeting, payment, and collection.

BE IT FURTHER RESOLVED, that the county commissioners' association and county assessors' association be invited by the state board of equalization to advise and counsel with the board in the formulation of such recommendations.

BE IT FURTHER RESOLVED, that the legislative council is requested to assist the state board of equalization in the preparation of any such recommended legislation.

BE IT FURTHER RESOLVED, that the secretary of state send copies of this resolution to each member of the state board of equalization, the executive director of the legislative council, and the chairmen of the county commissioners' association and county assessors' association.

Approved March 11, 1963.

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## HOUSE JOINT RESOLUTION NO. 22

A Joint Resolution of the Senate and House of Representatives for the Appointment of an Interim Air Pollution Investigating Committee to Study the Nature, Character and Extent of Air Pollution in the State of Montana and in the Various Communities in the State of Montana and to Report to the Thirty-Ninth Legislative Assembly.

WHEREAS, in several localities in the state of Montana air pollution to varying degrees has been and is being experienced by the residents of such localities; and

WHEREAS, premature action and legislation could result in harassment to industries now operating in Montana and could discourage the development and establishment of new industries; and

WHEREAS, the character of air pollution is highly technical and a definition of air pollution should be thoroughly worked out to determine which parts of the state are suffering from air pollution; and



HeinOnline -- 1963 vol. II 1310 1963

WHEREAS, a thorough study should be made of all areas of the state in which air pollution has been a matter of public concern to make an intelligent appraisal and study of the nature and extent of the air pollution to determine whether legislative action is necessary and to what extent legislative action may be necessary;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a special interim air pollution investigating committee composed of seven (7) members who are residents of the state of Montana be appointed by the governor of the state of Montana to make an investigation of air pollution in the state of Montana and report to the legislature in 1965 without recommendation.

That said committee study the problem, nature, extent and character of air pollution, if any, within the state of Montana, giving attention to the extent and effect of air pollution, the question of whether or not the problem has developed beyond that which can be dealt with effectively, locally, and by local communities, the sufficiency and adequacy of present statutory provisions dealing with and controlling actual nuisances, the extent and effectiveness of the enforcement of existing statutory provisions and remedies by the state, county and local officials responsible therefor, the desirability of and the possible benefits which might result from the enactment of some type of air pollution control legislation, the extent to which the industry has and is endeavoring to meet the problem of air pollution and the effect of air pollution controls upon Montana's developing industrial complex.

That the committee, to the fullest extent possible, review the reports and studies heretofore made by public and private agencies of conditions existing in various Montana communities and, in that connection, that the committee is authorized to call upon and to receive the aid and assistance of the personnel of the state board of health.

That the authority granted to said committee and the power to appoint and constitute such committee shall be effective immediately upon adoption and approval of this resolution.

Approved March 7, 1963.

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## SENATE JOINT RESOLUTION NO. 1

A Joint Resolution of the Senate and House of Representatives



HeinOnline -- 1963 vol. II 1311 1963

Requesting the State Laboratory Commission to Designate the Building Now known as the State Laboratory Building as the W. F. Cogswell Building in Honor of That Montana Medical Pioneer.

WHEREAS, Dr. W. F. Cogswell, a pioneer in Montana medical history, devoted more than thirty years of his life toward the improvement of public health in Montana, and

WHEREAS, Dr. Cogswell served with distinction for many years as Executive Secretary of the State Board of Health, and

WHEREAS, many of the public health programs now operating in the state were initiated by Dr. Cogswell, and these programs have proved sufficiently farsighted to remain suitable for the needs of today, and

WHEREAS, Dr. Cogswell was recognized internationally for his significant contributions to the control of tick-borne diseases and devoted his untiring efforts toward the establishment of the public health laboratory which now exists at Hamilton for research and control of Rocky Mountain spotted fever, and

WHEREAS, because of his lifelong devotion to Montana, Dr. Cogswell is justly deserving of the gratitude of all citizens of the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the thirty-eighth legislative assembly does hereby wish to acknowledge the gratitude and respect so well deserved by Dr. Cogswell by requesting that the state laboratory commission, by formal action, direct that the building now known as the State Laboratory Building be renamed the W. F. Cogswell Building in honor of this medical pioneer.

Approved February 4, 1963.

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## SENATE JOINT RESOLUTION NO. 2

A Joint Resolution of the Senate and House of Representatives Complimenting the Governor's Domestic Relations Committee for Their Excellent Work and Expressing the Gratitude of the



HeinOnline -- 1963 vol. II 1312 1963

Montana Legislative Assembly to the Members of That Committee.

WHEREAS, the 1961 legislative assembly of Montana recognized the tragic conditions which sometimes result from teen-age marriages, and

WHEREAS, the 1961 legislative assembly of Montana, by Senate Joint Resolution No. 15, requested that the governor appoint a domestic relations committee to study the problems of teen-age marriages and divorces in an attempt to develop ways and means whereby laws could be drafted for the purpose of promoting the stability of marriages in the state of Montana, and

WHEREAS, the governor appointed a committee to conduct this study pursuant to the legislative request, and

WHEREAS, the governor's domestic relations committee has conducted a most thorough, comprehensive study of the problem and submitted an excellent report of their findings to the governor,

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly congratulate the governor's domestic relations committee on the excellent study conducted.

BE IT FURTHER RESOLVED, that the legislative assembly wishes to express its gratitude to the members of the committee for their conscientious, unselfish, dedicated efforts on behalf of the citizens of the state of Montana.

BE IT FURTHER RESOLVED, that the secretary of state be directed to send a copy of this resolution to the governor and to each member of the governor's domestic relations committee.

Approved February 1, 1963.

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## SENATE JOINT RESOLUTION NO. 6

A Joint Resolution of the Senate and House of Representatives of the State of Montana Inviting the Boy Scouts of America to Hold and Conduct Its National Boy Scout Jamboree in 1968 on the Eastern Border of Glacier National Park Near East Glacier, Montana.

WHEREAS, the Boy Scouts of America conduct jamborees on a national level in scenic and wholesome surroundings, and



HeinOnline -- 1963 vol. II 1313 1963

WHEREAS, the people of Montana have a keen interest in the activities of the Boy Scout movement, and

WHEREAS, the Boy Scout Jamboree has never been conducted in Montana, and

WHEREAS, a number of sites immediately outside the eastern border of Glacier National Park are now under consideration as a place where a scout jamboree may be held, and

WHEREAS, Glacier National Park is a unique park in that it has 60 living glaciers and it is one of the most scenic and interesting parks within the United States, and

WHEREAS, East Glacier, Montana, is near the Blackfoot Indian Reservation at Browning, where, in an authoritative and authentic museum, Indian property, relics and items having tremendous interest to those interested in anthropology are preserved for the information of all Americans, and

WHEREAS, there is, within a short distance of Glacier National Park, the largest fresh water lake in the United States east of the Mississippi River, Flathead Lake, and

WHEREAS, within a short distance of Glacier National Park is located one of the world's highest and largest concrete dams, Hungry Horse, and

WHEREAS, near Glacier National Park the Boy Scouts of America can see and observe wild life, including elk, deer, mountain sheep, mountain goats, marmots, bears, and moose, and

WHEREAS, Glacier National Park is near the Bob Marshall Wilderness Area and other alpine areas, said areas being some of the last genuine and authentic primitive areas in the United States, and

WHEREAS, there are numerous dude ranch facilities in the immediate area of the east border of Glacier National Park, and

WHEREAS, many persons are known to take tremendous interest in the Triple Divide peak of Glacier National Park because of the knowledge that the waters flowing from said peak flow into the Pacific, Atlantic, and Arctic Oceans, and

WHEREAS, the relationship between the United States and Canada is excellent, and the Dominion of Canada has established Waterton National Park which is also a mecca for persons interested in mountain beauty and recreation, and



HeinOnline -- 1963 vol. II 1314 1963

WHEREAS, the climate of the proposed site is cool at night, warm during summer days, and relatively dry (average rainfall during July being about 1.6 inches); there are no poisonous snakes and the area is free of rats, and

WHEREAS, Yellowstone National Park is in relatively close proximity to the east side of Glacier National Park and

WHEREAS, adequate transportation, including railroads with numerous sidings, bus and airlines, is available from all points of the United States to Glacier National Park and the proposed sites, and

WHEREAS, the people of Montana would feel privileged and honored to welcome the American Boy Scout Jamboree in 1968 to Montana, and

WHEREAS, it is the consensus of the membership of the Senate and House of Representatives of the sovereign State of Montana that the holding of the National Jamboree for the Boy Scouts of America in 1968 within the State of Montana would be an event which would prove to have a wholesome and beneficial effect upon the lives of the young men and their sponsors at such Jamboree.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State Highway Commission, in general, and the State Advertising Director, in particular, be authorized, requested, and directed to invite the Boy Scouts of America, through the National Headquarters of said organization, to hold and conduct its National Boy Scout Jamboree in 1968 at one of several sites immediately outside the eastern border of Glacier National Park near East Glacier, Montana, and that said Commission and Advertising Director use all proper means to extend Montana hospitality to said Boy Scouts of America, and

BE IT FURTHER RESOLVED, that this formal resolution is intended to be an invitation from all of the people of Montana to said Boy Scouts to enjoy the scenic beauty, wonders, and recreational facilities within the State of Montana, the Big Sky Country, and

BE IT FURTHER RESOLVED, that the secretary of state be instructed to send copies of this joint resolution to each member of the State Highway Commission, the Advertising Director of the Highway Commission, the Honorable Tim Babcock, Governor of



HeinOnline -- 1963 vol. II 1315 1963

Montana, the bus, railroad, and transportation agencies, the National Headquarters of the Boy Scouts of America, the Councils of the Boy Scouts of America within the State of Montana, the Highway Number 2 Association, and to such other persons or agencies which would endeavor to assist the Boy Scouts of America to make the National Jamboree within the State of Montana in 1968 a success from every point of view.

Approved March 5, 1963.

---

## SENATE JOINT RESOLUTION NO. 8

A Joint Resolution of the Senate and House of Representatives Directing the Legislative Council to Conduct a Study of State Investments and Depository Practices.

WHEREAS, the state of Montana presently has millions of dollars in the state treasury and in depository banks throughout the state, and

WHEREAS, under present investment practices employed in the state of Montana much of this money apparently is not drawing interest or does not otherwise produce any benefits to the state of Montana, and

WHEREAS, state government is increasingly hard pressed to raise the revenue necessary to keep abreast of an ever broadening and intensifying demand for governmental services, and

WHEREAS, the prudent investment of state funds will increase state revenue without imposing any further tax burden upon the citizens of the state, and

WHEREAS, it is particularly appropriate that the legislative branch of government explore any possible new sources of revenue which do not also entail additional taxation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENATIVES OF THE STATE OF MONTANA:

That the Legislative Council is directed to conduct a comprehensive study of

1. State depository practices, including the arrangements under which surplus cash, debt retirement funds, and other moneys are held in depository banks throughout the state.



HeinOnline -- 1963 vol. II 1316 1963

2. Investment practices for state moneys including surplus cash, trust funds and all other moneys held by an agency of state government.

3. The organization and procedures of the State Board of Land Commissioners, the Commissioner of State Lands and Investments, the State Depository Board, and the State Treasurer, insofar as these organizations and procedures relate to the investment of moneys and,

4. The management of the states bonded and other indebtedness including practices involved in the floating of bond issues, use of bond proceeds and redemption of bonds; and

BE IT FURTHER RESOLVED, that the Legislative Council call upon members of the banking industry, the investment industry, for assistance and advice in its study and

BE IT FURTHER RESOLVED, that the Legislative Council engage any experts or consultants necessary to assist in its study and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations to the thirty-ninth legislative assembly, together with such bills and resolutions as may be necessary to implement its findings.

Approved February 27, 1963.

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## SENATE JOINT RESOLUTION NO. 10

A Joint Resolution of the Senate and House of Representatives Supporting Continued Operation of the Montana Soldiers' Home at Columbia Falls, and Requesting Studies and Recommendations for a Long-Range Plan for Future Needs.

WHEREAS, the Montana Soldiers' Home at Columbia Falls was established before the turn of the century by the Montana Legislative Assembly for the purpose of providing to honorably discharged veterans of armed conflicts of the United States, and to their wives and widows, security in the form of a home during their declining years; and

WHEREAS, the Montana Soldiers' Home has for more than sixty years ably and well performed the purpose for which originally founded, by serving as a comfortable and pleasant place of abode



HeinOnline -- 1963 vol. II 1317 1963

for those veterans and their wives and widows who have no other home and are deserving of the gratitude and support of the state of Montana for their services; and

WHEREAS, the Montana Soldiers' Home is now filled to capacity, and many of the buildings and facilities being used date from the earliest days of the institution, and have not been replaced or modernized to the extent that they are no longer economical to operate, or comfortable to occupy, or even entirely safe and sanitary for their residents; and

WHEREAS, the number of veterans of armed conflicts of the United States has increased greatly by reason of the large number of Montana citizens serving in the armed forces of the United States during World War II and the Korean conflict, a substantial number of whom will in years to come be needing and desiring the services of the home, and entitled both by the law and as a moral obligation of the state to such services; and

WHEREAS, such services and facilities will not be available to these deserving veterans and their wives and widows unless prompt consideration be given to the present and future needs of the home, and a long range program for renovation and construction and improvement be formulated, together with legislation to implement and finance it;

NOW THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor appoint a committee of five (5) war veterans to promptly initiate and energetically pursue a study of the facilities of the Montana Soldiers' Home, and of the needs of the home in future years, and formulate such plans and programs as may appear necessary and desirable to carry out the original intent of the Act of the Montana Legislative Assembly of 1897, establishing the Montana Soldiers' Home, together with the Act of Congress of 1888, providing aid to state homes for the support of older and unemployable veterans of the United States; and

BE IT FURTHER RESOLVED that the said committee prepare and have ready for submission to the Montana Legislative Assembly at its next session such plans and programs as it may formulate under this directive, together with suitable recommendations and a draft of proposed legislation to carry out such objectives.

Approved March 2, 1963.



HeinOnline -- 1963 vol. II 1318 1963

## SENATE JOINT RESOLUTION NO. 11

A Joint Resolution of the Senate and House of Representatives Directing the Legislative Council to Study and Report the Best Methods to be Followed to Achieve Cooperative Action by State, and Local Agencies or Other Entities of Government in the Full Development and Utilization of Our Water and Other Resources and Related Lands.

WHEREAS, the state has a responsibility for planning and leadership in the development of its natural resources; and

WHEREAS, full development and utilization of water and other natural resources are esential to the continued economic growth of the state; and

WHEREAS, there is need for factual analysis of the place and role of water control facilities in regional planning and development efforts; and

WHEREAS, optimum progress toward these ends may best be approached by intergovernmental cooperation, and by mutual recognition of the responsibilities and contribution of the various levels of government; and

WHEREAS, a practical and workable program of implementation is needed by the state of Montana, its political subdivisions and associated federal agencies, and by development groups and organizations concerned with water programs within the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council is authorized and directed to conduct a study and to report to the thirty-ninth legislative assembly its recommendations together with any necessary legislation on an active program to achieve these ends, including but not necessarily confined to the following:

1. Full utilization of existing water developments and related lands, including industrial, recreational, municipal, water supplies, pollution control, and other purposes.

2. Relationship and role of water control projects in statewide as well as regional or area development objectives and to programs of regional and area associations.

3. Procedure and criteria for evaluating the potential contri-



HeinOnline -- 1963 vol. II 1319 1963

bution of one or more specific projects to the advancement of particular portions of the state.

4. Possible areas of federal, state, and local participation, financial, staffing and otherwise, in development programs and projects, including necessary and desirable state, and local legislative enactments and recommended administrative arrangements.

5. Measures and programs needed to insure adequate protection of water quality and wise conservation of our water resources.

BE IT FURTHER RESOLVED, that in the accomplishment of this study the Legislative Council may invite the cooperation, assistance and financial participation of any entity of government, and any other person or organization interested in the development of Montana's water and other natural resources.

Approved March 5, 1963.

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## SENATE JOINT RESOLUTION NO. 12

A Joint Resolution of the Senate and House of Representatives Directing the State Water Conservation Board to Transfer Administrative Control of Dead Man's Basin and the Painted Rocks Reservoir to the Highway Commission for Development of State Parks or Recreation Areas.

WHEREAS, there is increasing pressure nationwide upon existing recreational facilities, and

WHEREAS, due to the rising standard of living, shorter work hours, and increased mobility of the American people, there is every reason to expect that the demand for recreational facilities will continue to increase in the future, and

WHEREAS, the development of recreation areas is not only of benefit to all citizens of the state in terms of the enjoyment they receive, but these facilities also attract out-of-state tourists who contribute almost one hundred million dollars each year to the economy of the state, and

WHEREAS, the development of recreation areas is, therefore, of benefit to the citizens and also a prudent investment in the economy of Montana, and

WHEREAS, the state of Montana now owns land in Ravalli county in the area of Painted Rocks Reservoir and in Wheatland county in the area of Dead Man's Basin, and



HeinOnline -- 1963 vol. II 1320 1963

WHEREAS, both of these areas would be readily adaptable as state parks or recreation facilities, and

WHEREAS, both these areas contain reservoirs which are important for recreational purposes, but also important for purposes of water conservation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly hereby directs the state water conservation board to transfer administrative control for the purpose of developing recreational facilities over state lands in the Dead Man's Basin area and the Painted Rocks Reservoir area to the state highway commission.

BE IT FURTHER RESOLVED, that legal ownership of the land and control over the reservoir facilities in these areas, and the right of ingress and egress to all water conservation and control facilities be retained by the state water conservation board.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to furnish copies of this resolution to the governor, and to each member of the state highway commission and the state water conservation board.

Approved March 2, 1963.

---

## SENATE JOINT RESOLUTION NO. 13

A Joint Resolution of the Senate and House of Representatives Directing the State Board of Land Commissioners to Study the Problem of Concentrations of State Land in Various Counties and Recommend a Corrective Plan to the 39th Legislative Asembly.

WHEREAS, Montana received certain lands from the federal government to hold in trust for the purpose of establishing and maintaining a free public school system, and that such lands are not uniformly located throughout the state.

WHEREAS, Such state lands are exempt from taxation and reduce the tax base in the counties in which they are located, thus, creating an unequal tax burden between the various citizens of this state.



HeinOnline -- 1963 vol. II 1321 1963

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state board of land commissioners is hereby directed to study the problem of unusual concentration of state owned land in certain counties, and to devise and recommend to the 39th Legislative Assembly an appropriate and feasible plan directed toward correcting the abnormal distribution of state owned land among counties.

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state of Montana to the members of the state board of land commissioners and to the commissioner of state lands and investments.

Approved March 9, 1963.

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## SENATE JOINT RESOLUTION NO. 15

A Joint Resolution of the Senate and House of Representatives Petitioning Congress to Call a Convention for the Purpose of Proposing an Amendment to the Constitution of the United States.

WHEREAS, the authority to apportion the legislative body of each state properly belongs to the legislative assembly, or to the people of that state, and

WHEREAS, through its decision in *Baker vs. Carr* the Supreme Court of the United States has attempted to extend the judicial power of the courts into an area which is traditionally, properly, and constitutionally a prerogative of the legislative branch of state government.

WHEREAS, Article V of the United States Constitution provides that Congress, "on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments."

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly petitions the Congress of the United States to call a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States:



HeinOnline -- 1963 vol. II 1322 1963

"ARTICLE .....

"Section 1. No provision of this Constitution or any amendment thereto, shall restrict or limit any state in the apportionment of representation in its legislature."

"Section 2. The judicial power of the United States shall not extend to any suit in law or equity, or to any controversy relating to apportionment of representation in a state legislature."

"Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission."

BE IT FURTHER RESOLVED, that if Congress shall have proposed an amendment to the Constitution identical with that contained in this resolution prior to January 1, 1965, this application shall no longer be of any force or effect.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the secretary of the senate and the clerk of the house of representatives of the United States, and to each member of the Montana congressional delegation.

Approvd March 5, 1963.

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## SENATE JOINT RESOLUTION NO. 16

A Joint Resolution of the Senate and House of Representatives Requesting the Legislative Council to Study the Rules of the House and Senate.

WHEREAS, the functions of the Senate and House of Representatives are basically similar, and, although some dissimilarity in rules is necessary and inevitable, it is illogical that the rules of procedure should be radically different, and

WHEREAS, at the present time the rules of the two houses contain many contradictions within themselves, are not clear on many points, in some cases are obsolete, and

WHEREAS, the rules not only confuse the members, but mitigate against a clear understanding of the workings of the two houses by citizens of the state, and



HeinOnline -- 1963 vol. II 1323 1963

WHEREAS, a disproportionate amount of time and energy is unnecessarily dissipated by members of the legislature each session in interpreting ambiguous rules, settling disputes, clarifying rules for members of each house, and pondering apparently irreconcilable conflicts, and

WHEREAS, a few specific examples of inconsistent and archaic rules are as follows:

1. House Rule No. 34 and Joint Rule 20, which relate to the form of bills, are grossly inconsistent.

2. House Rules Nos. 41, 42 and 53 contain provisions prohibiting their suspension, although they are not based on constitutional or statutory provisions.

3. Joint Rule No. 3 provides that when a message is sent from either house to the other it shall be announced at the door, an archaic provision which is not observed.

4. In the senate rules there are 14 references to the 1935 code, which was superseded by the 1947 code 16 years ago.

5. Senate Rule No. X, 9 incorrectly refers to rule X, 9 when rule X, 8 is the proper reference.

6. Senate Rule XII, which provides that a senator shall speak standing in his place, "and when he has finished sit down" would seem to be an unnecessarily detailed elaboration of the physical posture to be assumed by members of that honorable body, and

WHEREAS, there are also many obsolete and archaic laws relating to legislative procedure, some of which have been unchanged since the nineteenth century.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a comprehensive study of the rules of the senate and house of representatives, the joint rules, and statutes relating to legislative procedure.

BE IT FURTHER RESOLVED, that the legislative council shall recommend to the Thirty-ninth Legislative Assembly a proposed draft of senate, house and joint rules, and any other legislation necessary to clarify, simplify and coordinate the rules of the two houses, without causing any radical change in the procedures of the two houses.



HeinOnline -- 1963 vol. II 1324 1963

BE IT FURTHER RESOLVED, that the legislative council shall call upon legislative leaders and key attaches where necessary for counsel and advice in its study.

Approved February 27, 1963.



HeinOnline -- 1963 vol. II 1325 1963

## CHANGES OF NAMES DECREED IN 1961 - 1962

| Date of Judgment | Original Name | Name Decreed | Residence |
|---|---|---|---|
| Jan. 3, 1961 | Kathleen Palin | Kathleen Hanson | Billings |
| Jan. 4, 1961 | Donita Gay | Donita Adams | Dodson |
| Jan. 4, 1961 | Marjorie Ann Bonn | Marjorie Ann Reid | Anaconda |
| Jan. 6, 1961 | Shirly Diana Carns | Shirly Diana Berry | Billings |
| Jan. 25, 1961 | Raymond A. Kaniewski | Raymond A. Kaneski | Sidney |
| Feb. 8, 1961 | Arthur Hugh Swan | Scott Hugh Swan | Anaconda |
| March 3, 1961 | David Lee Herron | David Lee Bernhardt | Billings |
| March 7, 1961 | Dorothy Vivian Barrett | Dorothy F. Craig | Billings |
| March 21, 1961 | George J. Sprunkowski | George J. Springer | Nye |
| March 21, 1961 | Waino Johannes Junkkila | Wayne John Maki | Columbus |
| March 22, 1961 | George Wilbur Goff | George Wilbur Yates | Butte |
| March 24, 1961 | Jeannette Marie Prohosky | Jeannette Marie Arrigoni | Butte |
| April 5, 1961 | Alma Olive Drange | Alma Drange | Ismay |
| April 10, 1961 | William Sidney Dunning | William Sidney Borchers | Havre |
| April 12, 1961 | Clifford Watson | Clifford Watson Stump | Rocky Boy |
| April 13, 1961 | Gary White Man Runs Him | Gary Gordon | Lodge Grass |
| April 17, 1961 | Archibald Tunnock, Jr. | Scott Tunnock | Missoula |
| April 24, 1961 | Danny Eugene Gipson | Danny Eugene Nelson | Havre |
| June 5, 1961 | Family of Brudwold | Family of Bennett | Billings |
| June 19, 1961 | Debra Rae Hamm | Debra Wynona Hamm | Missoula |
| July 5, 1961 | Dallas Orvin Stearns | Dallas Orvin Miller | Belgrade |
| July 10, 1961 | Jerome Leslie Craft | Jerome Leslie Hanburg | Box Elder |
| July 24, 1961 | William Bernard Johnson | William Bernard Cabbage | Kalispell |
| Aug. 16, 1961 | Edward LeRoy Kohanek | Edward Steven Jacobs | Lake County |
| Aug. 25, 1961 | Russell Martin Romano | Russel Martin Stromberg | Havre |
| Aug. 28, 1961 | Doris Mae Camp | Doris Lavelle Camp | Missoula |
| Aug. 29, 1961 | Iver Carl Poil | Iver Carl Buer | Scobey |
| Aug. 31, 1961 | Robert Richard Lessard | Robert Richard Davisson | Hardin |
| Sept. 14, 1961 | Percy Joseph Rosen | Percy Joseph Bronson | Bozeman |
| Sept. 14, 1961 | Sonyia Marilyn Rosen | Sonyia Marilyn Bronson | Bozeman |
| Sept. 14, 1961 | Paul John Rosen | Paul John Bronson | Bozeman |
| Sept. 14, 1961 | Rebecca Sue Rosen | Rebecca Sue Bronson | Bozeman |
| Sept. 14, 1961 | Dana Joseph Rosen | Dana Joseph Bronson | Bozeman |
| Sept. 19, 1961 | Carl Frank Pilny | Gerald LeRoy DeLeary | Glasgow |
| Sept. 20, 1961 | Gerald LeRoy Robinson | Sharon Lucille Morrow | Anaconda |
| Sept. 29, 1961 | Sharon Lucille Gerbich | Charles Fred Pilny | Libby |
| Oct. 9, 1961 | Walter William Rychel | Walter William Ray | Butte |
| Oct. 25, 1961 | Carol Kendall | Carol Lind | Malta |
| Nov. 1, 1961 | James Salle | James Sestrich | Anaconda |
| Nov. 8, 1961 | Clarence Dean Cunningham | Kurt Dean Cunningham | Miles City |
| Nov. 10, 1961 | Jimmy Jerry Rodeghiero | James Gerald Rodeghiero | Roundup |
| Nov. 20, 1961 | Denise Lee Olson | Denise Lee Longfellow | Helena |
| Nov. 20, 1961 | Gerald Thomas Olson | Gerald Thomas Longfellow | Helena |
| Nov. 20, 1961 | Larry Howard Olson | Larry Howard Longfellow | Helena |
| Nov. 21, 1961 | Dale Hardenbrook | Dale Moline | Livingston |
| Dec. 4, 1961 | Robert Dennis Trumbell | Robert Dennis Scholl | Havre |
| Dec. 4, 1961 | Walter Lloyd Sorenson, Jr. | Lloyd Martin Pierson | Kalispell |
| Dec. 15, 1961 | Lloyd Donald Clark | Lloyd Donald Hallenberg | Ethridge |
| Dec. 15, 1961 | JoAnn Clark | JoAnn Hallenberg | Ethridge |
| Dec. 21, 1961 | Mary Virginia Martin | Mary Virginia Jacobson | Missoula |
| Feb. 16, 1962 | Pearl Diane Wentella Richards | Pearl Diana Curtis Richards | Twin Bridges |
| Feb. 28, 1962 | Nathan James Harvey | Nathan James Mace | Silver Bow Co. |
| March 7, 1962 | Linda Marguerite Leas | Linda Marguerite Nichols | Yellowstone Co. |
| March 20, 1962 | Raymond Robert Blach | Raymond Robert Black | Anaconda |
| April 6, 1962 | Dan Chatwood | Dan Hardy | Yellowstone Co. |
| April 6, 1962 | Joan Watkins Ford | Joan Watkins | Silver Bow Co. |
| April 11, 1962 | Christina Lee Blehm | Christina Lee Walth | Yellowstone Co. |
| April 18, 1962 | Jenya P. Kosyak | Eugene P. Kosylak | Great Falls |
| April 23, 1962 | Bruce Conrad Lawrence | Bruce Conrad Roberts | Missoula |
| May 7, 1962 | William Earl Nail | William Earl Riley | Silver Bow Co. |
| May 16, 1962 | Barbara Lee Gaab | Barbara Lee Dear | Simms |
| May 18, 1962 | John Frank Slanina | John Frank Bacon | Great Falls |
| May 18, 1962 | Joseph Edward Slanina | Joseph Edward Bacon | Great Falls |
| May 18, 1962 | Margaret Josephine Slanina | Margaret Josephine Bacon | Great Falls |
| May 24, 1962 | Wendy Marie Gruber | Wendy Marie Williams | Townsend |
| May 25, 1962 | Mary Elizabeth Fleener | Mary Elizabeth Officer | Yellowstone Co. |
| May 28, 1962 | St. Paulus Evangelical Lutheran Church | St. Paul's United Church of Christ | Yellowstone Co. |



HeinOnline -- 1963 vol. II 1326 1963

## CHANGES OF NAMES DECREED IN 1961 - 1962

| Date of Judgment | Original Name | Name Decreed | Residence |
|---|---|---|---|
| June 12, 1962 | Donna Kathleen Dickgraber | Donna Kathleen Bradley | Livingston |
| June 25, 1962 | Baby Boy Myre | Jeffrey Noel Hajenga | Benchland |
| July 23, 1962 | Baby Watson | Gloria Anne Hungate | Stanford |
| Aug. 6, 1962 | Baby Juliano | Leo Victor Gerleman | Bozeman |
| Aug. 6, 1962 | Leo Victor Meng | Patrick James Gerleman | Bozeman |
| Aug. 15, 1962 | Patrick James Meng | Roxene Rae Metrovich | Windham |
| Aug. 20, 1962 | Richard Lee Anvick | Richard Lee Simmons | Yellowstone Co. |
| Aug. 24, 1962 | Donna Marie Tweedy | Donna Marie Tweedy O'Neil | Yellowstone Co. |
| Aug. 24, 1962 | Randall Wayne Tweedy | Randall Wayne O'Neil | Yellowstone Co. |
| Aug. 27, 1962 | Baby Girl Wawers | Mary Beth Proctor | Stanford |
| Aug. 27, 1962 | Dexter Rice | Dexter Lee Bright | Missoula |
| Aug. 31, 1962 | Ra Von Anderson | Ra Von Anderson Henderson | Toole County |
| Sept. 6, 1962 | Donald Herbert Moore | Donald Herbert Vaughn | Missoula |
| Sept. 7, 1962 | Larry Wayne Payne | Larry Wayne Henry | Yellowstone Co. |
| Sept. 7, 1962 | Robert Marcil | Leo Delaine Ellingson | Great Falls |
| Sept. 12, 1962 | Philip John Baker | Philip John Weist | Anaconda |
| Sept. 27, 1962 | Gottlieb Kraft | Richard John Kraft | Hardin |
| Oct. 9, 1962 | Stanley Vern Kapphan | Stanley Vern Lindsay | Chinook |
| Oct. 18, 1962 | Billie Gaythor Ammerman | William Gayther Ammerman | Missoula |
| Oct. 22, 1962 | Milo Lemm | Robert Bernard Dickey | Bozeman |
| Oct. 22, 1962 | Baby Boy Hanspack | Charles Jeffrey Hill | Utica |
| Oct. 22, 1962 | Randy Lee Taylor | Randy Lee Dirkson | Hobson |
| Oct. 22, 1962 | Sherry Mae Taylor | Sherry Mae Dirkson | Hobson |
| Oct. 22, 1962 | Ellen Marie Taylor | Ellen Marie Dirkson | Hobson |
| Oct. 24, 1962 | Carl Jude Christopher Ness | Carl Jude White | Great Falls |
| Oct. 24, 1962 | Mary Louise Ness | Mary Louise White | Cascade County |
| Oct. 24, 1962 | John Gerald Kennedy | John Gerald Scott | Helena |
| Oct. 31, 1962 | Carol May Hovland | Carol May Tyrrell | Yellowstone Co. |
| Nov. 2, 1962 | Sylvester John Sladovnik | Sylvester John Slade | Yellowstone Co. |
| Nov. 3, 1962 | Robert Allen Wakeman | Robert Allen Thrilkill | Helena |
| Nov. 7, 1962 | Gregory Lee Wheeler | William Gregory Wheeler | Silver Bow Co. |
| Nov. 19, 1962 | Margaret Elaine Livingston | Margaret Elaine Coffey | Winnett |
| Nov. 30, 1962 | John Donald Wright | Jack Donald Filcher | Corvallis |
| Dec. 4, 1962 | Cheryl John Wortmann | Johnny Chet McGee | Livingston |
| Dec. 10, 1962 | Kenneth Leland Wheatley | Kenneth Leland Bracken | Yellowstone Co. |
| Dec. 11, 1962 | J. Marion Olson | J. Marion Dooner | Phillips County |
| Dec. 27, 1962 | James Bruce Vance | James Bruce Herbert | Fort Peck |
| Jan. 16, 1963 | Richard Orman Cannon | Richard Orman Shrum | Cascade County |



HeinOnline -- 1963 vol. II 1327 1963

HeinOnline -- 1963 vol. II 1328 1963

# APPENDIX

HeinOnline -- 1963 vol. II 1329 1963

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HeinOnline -- 1963 vol. II 1330 1963

# APPENDIX

The following constitutional amendments were proposed by the Thirty-seventh Legislative Assembly:

Chapter 121, Laws of 1961, providing for the abolishment of the constitutional status of inferior courts; and

Chapter 164, Laws of 1961, providing for a four-year term of office for county attorneys.

Chapter 121 failed to be approved by the following vote at the General Election held November 6, 1962:

| | |
|---|---|
| For: | 80,018 |
| Against: | 81,191 |

Chapter 164 was approved at the same election by the following vote:

| | |
|---|---|
| For: | 106,681 |
| Against: | 68,394 |

The text and title of Chapter 164 follow.

An Act for the Submission to the Qualified Electors of the State of Montana an Amendment to Section 19 of Article VIII of the Constitution of the State of Montana Relating to the Election, Qualifications, Term of Office, Salary, and Duties of County Attorneys, to Provide That the Term of Office of County Attorneys Shall be Four (4) Years.

*Be it Enacted by the Legislative Assembly of the State of Montana:*

Section 1. That section 19 of article VIII of the constitution of the state of Montana be amended as hereinafter provided, and that the question of such amendment be submitted to the qualified electors of the state of Montana, at the general election to be held in November of 1962.

Section 2. That section 19 of article VIII of the constitution of the state of Montana, be and the same is hereby amended to read as follows:

"Section 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be *four*



HeinOnline -- 1963 vol. II 1331 1963

*years,* and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law."

Section 3. This amendment shall be submitted to the qualified electors of the state of Montana by being placed upon an official ballot as provided by chapter 11 of title 23 of the Revised Codes of Montana, 1947, as amended, and there shall be printed on such ballot the title of this act and the following words:

"☐ For the above amendment

☐ Against the above amendment"

Clyde L. Hawks
Speaker of the House

Tim Babcock
President of the Senate



HeinOnline -- 1963 vol. II 1332 1963

# GENERAL INDEX

**NOTE:**

**Index of Appropriations Follows General Index**

HeinOnline -- 1963 vol. II 1 1963

HeinOnline -- 1963 vol. II 2 1963

# INDEX TO TEXT

# A


| | Sec. | Page |
|---|---|---|
| **ABBANDONMENT OF WIFE OR CHILDREN** | | |
| Penalties | Ch. 179 | 540 |
| **ACTIONS** | | |
| Appearances by defendants, notices after | Ch. 4 | 6 |
| Commencement by complaint, statute repealed | Ch. 6 | 6 |
| **ADOPTION** | | |
| Interlocutory and final decree | 1 | 3 |
| **AERONAUTICS COMMISSION** | | |
| See Treasury Fund Structure Act. | | |
| **AGED PERSONS** | | |
| Counties may lease facilities for homes for | Ch. 87 | 179 |
| Establishment of homes for by counties | Ch. 88 | 179 |
| **AGRICULTURE** | | |
| Commercial Feed Act | Ch. 127 | 244 |
| Commissioner authorized to transfer certain funds | Ch. 114 | 223 |
| Fertilizer material, guaranteed analysis | Ch. 43 | 72 |
| Potatoes, U. S. commercial grade as standard | Ch. 30 | 41 |
| Re-use of fruit crates | Ch. 29 | 40 |
| Seasonal nurserymen, licensing of | Ch. 121 | 229 |
| Warehouseman's possession of grain as bailment | 11-101 | 1079 |
| See Treasury Fund Structure Act | | |
| **AIRCRAFT** | | |
| Operation in careless or reckless manner, penalties | Ch. 102 | 201 |
| **ALIAS SUMMONS** | | |
| Manner and time of issuing, statute repealed | Ch. 5 | 6 |
| **ALCOHOLIC BEVERAGES** | | |
| Bottle clubs prohibited | Ch. 109 | 215 |
| Retail liquor licenses, issuance on basis of population, lapses | Ch. 217 | 668 |
| See Beer | | |
| **ALCOHOLISM** | | |
| Department of state hospital established | Ch. 112 | 218 |
| **ANNULMENT** | | |
| See Marriage and Divorce. | | |
| **APPEARANCES** | | |
| How made by defendants, notices after | Ch. 4 | 6 |
| **APPRAISERS** | | |
| Estates, compensation of | Ch. 94 | 188 |
| **APPRENTICESHIP COUNCIL** | | |
| Membership and director | Ch. 160 | 482 |




HeinOnline -- 1963 vol. II 3 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| **ARBOR DAY** | | |
| Date changed | Ch. 61 | 114 |
| **ARCHITECTS** | | |
| See Treasury Fund Structure Act. | | |
| **ATHLETIC COMMISSION** | | |
| See Treasury Fund Structure Act. | | |
| **ATTORNEYS** | | |
| See Treasury Fund Structure Act. | | |
| **AUCTIONEERS** | | |
| Authority to bind seller and bidder | 11-145 | 1109 |
| Reciprocity for non-residents, filing bonds | Ch. 173 | 511 |
| **AUTOPSIES** | | |
| Penalty for performance contrary to law | 21 | 64 |
| Qualifications to perform, written reports | 20 | 63 |

## B

| | | |
|---|---|---|
| **BANKS AND BANKING** | | |
| Building and loan and savings and loan associations, real estate loans authorized | Ch. 263 | 853 |
| Drive-in and walk-up facilities permitted | Ch. 39 | 53 |
| Par value of common capital stock | Ch. 45 | 80 |
| See Uniform Commercial Code | | |
| **BARBERS AND BARBER SHOPS** | | |
| See Treasury Fund Structure Act. | | |
| **BEER** | | |
| Licenses and fees, brewers | Ch. 122 | 230 |
| Temporary licenses for veterans and fraternal organizations | Ch. 235 | 718 |
| **BOARDS** | | |
| See State Boards | | |
| **BOILER INSPECTION** | | |
| See Treasury Fund Structure Act. | | |
| **BONDS AND UNDERTAKINGS** | | |
| Bid bonds, countersignature eliminated | Ch. 72 | 155 |
| Bond validating Act of 1963 | Ch. 100 | 195 |
| **BOTTLE CLUBS** | | |
| Prohibited | Ch. 109 | 215 |
| **BUILDINGAND LOAN ASSOCIATIONS** | | |
| Real estate loans authorized | Ch. 263 | 853 |

## C

| | | |
|---|---|---|
| **CADAVERS** | | |
| Burial permit and burial | 19 | 63 |
| **CARRIERS** | | |
| Transportation of coal by pipeline | Ch. 170 | 504 |




HeinOnline -- 1963 vol. II 4 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| **CENTENNIAL COMMISSION** | | |
| Established and temporary agency of state | Ch. 259 | 838 |
| Territorial warrants, delivered to by auditor for sale | Ch. 134 | 270 |
| **CHILDREN** | | |
| Commission to Montana children's center in divorce proceedings | 7 | 644 |
| Illegitimate | | |
| action to determine paternity | 2 | 712 |
| bond or security required of alleged father | 8 | 713 |
| judgments under paternity actions, payments | 7 | 713 |
| limitation on recovery from father | 3 | 713 |
| limitation on recovery from father's estate | 4 | 713 |
| obligation of father | 1 | 712 |
| paternity trial, when held | 6 | 713 |
| remedies, continuing jurisdiction of district court | 5 | 713 |
| venue of actions | 9 | 714 |
| Training of mentally retarded in public schools | Ch. 243 | 755 |
| Unlawful operation of motor vehicles, concurrent jurisdiction of courts | Ch. 188 | 561 |
| Wilful nonsupport or neglect, penalties | Ch. 179 | 539 |
| **CHIROPODY** | | |
| See Treasury Fund Structure Act | | |
| **CHIROPRACTIC** | | |
| See Treasury Fund Structure Act | | |
| **CITIES AND TOWNS** | | |
| Advertising for sale of bond issues | Ch. 52 | 97 |
| Authority to borrow for ditch protection | Ch. 158 | 477 |
| City-county planning boards | Ch. 247 | 782 |
| Contracts for which requests for bids required | Ch. 26 | 35 |
| Fire department relief associations, payments to | 70 | 325 |
| Funding or refunding bonds, negotiability | 11-108 | 1087 |
| Indenture for security of bonds | 11-107 | 1084 |
| Investment of moneys | 1 | 9 |
| Investment of sinking funds | Ch. 11 | 10 |
| Issuance of bonds for urban renewal | 11-109 | 1087 |
| Motor vehicle fees, share of | Ch. 178 | 533 |
| Municipal undertaking bonds | 11-106 | 1083 |
| Public funds, deposit, substitution of securities for | Ch. 40 | 54 |
| Refunding of water and sewer bonds, regulations | Ch. 51 | 93 |
| Refunding of water and sewer revenue bonds, terms and conditions | Ch. 50 | 91 |
| Salaries of officers, per diem | Ch. 142 | 279 |
| Taxation, exemption from special fuel tax | Ch. 66 | 127 |
| Zoning of suburban areas | Ch. 246 | 774 |
| **CIVIL PROCEDURE** | | |
| Alias summons, statute repealed | Ch. 5 | 6 |
| Appearances by defendants | Ch. 4 | 6 |
| Commencement of actions, statute repealed | Ch. 6 | 6 |
| Dismissal of actions | Ch. 111 | 216 |
| Justices and judges prohibited from acting as executors and administrators | Ch. 23 | 32 |
| Motions covering defenses and objections | Ch. 89 | 180 |
| Motions in opposition to will contest, Rule 12 | Ch. 8 | 7 |
| Objection that action not commenced in time, statute repealed | Ch. 7 | 7 |
| Re-enactment of general survival statute | 1 | 15 |
| Rule 4, persons subject to jurisdiction, process, service | Ch. 189 | 563 |
| Rule 4, statutes superseded by | Ch. 190 | 574 |
| Rule-making power in Supreme Court | Ch. 16 | 17 |
| Sections amended by Uniform Commercial Code | 11-157<br>11-171 | 1114<br>1121 |




HeinOnline -- 1963 vol. II 5 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| Service of citations in adoption proceedings | Ch. 2 | 3 |
| Supersedeas bonds, form for added | 1 | 4 |
| Verification of pleading, contents | Ch. 15 | 16 |
| **COAL** | | |
| Transportation by pipeline authorized | Ch. 170 | 504 |
| **COLUMBIA INTERSTATE COMPACT** | | |
| Cooperation in power development, existing rights | Ch. 196 | 589 |
| **COMMENCEMENT OF ACTIONS** | | |
| By complaint, statute repealed | Ch. 6 | 6 |
| **COMMERCIAL FEED** | | |
| Act regulating | Ch. 127 | 244 |
| **COMMERCIAL FERTILIZER** | | |
| Guaranteed analysis | Ch. 43 | 72 |
| See Treasury Fund Structure Act. | | |
| **CONSTITUTIONAL AMENDMENTS** | | |
| Proposed | | |
| justices' and judges' salaries, removal of prohibition against increase during term | Ch. 92 | 187 |
| **CONTRACTS** | | |
| Statute of Frauds, what must be in writing | 11-110 | 1088 |
| **CORPORATIONS** | | |
| Accomplishment of corporate acts without meetings of stockholders or directors | Ch. 155 | 469 |
| Consent to service or process by security officer | Ch. 105 | 205 |
| Dissolution, determination of tax due | 1 | 113 |
| Dissolution, shareholders' liability | 2 | 114 |
| Dissolution, tax clearance certificate | Ch. 59 | 112 |
| Involuntary winding up or dissolution, procedure for | Ch. 241 | 749 |
| Number of directors, fixed by by-laws | Ch. 183 | 546 |
| Professional service corporations authorized | Ch. 161 | 485 |
| Registration of securities, suspension | Ch. 71 | 153 |
| Taxation | | |
| assessment and payment of tax, penalty and interest | 4 | 559 |
| computation of license, tax, return to be filed, when | 3 | 557 |
| default in payment, levy and sale of property, action by attorney general | 4 | 559 |
| deficiency assessments and overpayments | 1 | 554 |
| periods of limitation, waiver | 2 | 556 |
| regulations by board, jurisdiction, disclosure | 5 | 560 |
| **COSMETOLOGY** | | |
| Licenses and examination fees | Ch. 131 | 267 |
| See Treasury Fund Structure Act | | |
| **COUNTIES** | | |
| Assessors, annual meetings, schools | Ch. 227 | 693 |
| Budgets, fixing amounts for each item | Ch. 220 | 673 |
| Clerk and recorders | | |
| attendance at general association meetings, expense | Ch. 85 | 176 |
| memberships in organizations, expense | Ch. 84 | 176 |
| Commissioners' compensation and per diem | Ch. 113 | 221 |
| Commissioners' control of bridges, repair of stream beds | Ch. 172 | 510 |




HeinOnline -- 1963 vol. II 6 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| Contracts for which requests for bids required | Ch. 25 | 34 |
| Emergency budgets, limitations | Ch. 194 | 582 |
| Establishments of homes for aged | Ch. 88 | 179 |
| Fees of county clerks | 11-115 | 1095 |
| Indexes to be kept | 11-111 | 1088 |
| Investment of bond sinking and interest funds | Ch. 12 | 11 |
| Investment of sinking funds | Ch. 11 | 10 |
| Issuance of coupon bonds for protection from ditches fund | Ch. 136 | 272 |
| Issuance of funding bonds authorized | Ch. 210 | 636 |
| Leasing facilities for homes for aged | Ch. 87 | 179 |
| Levy of additional 11½ mill tax for poor funds | Ch. 262 | 852 |
| Levy for completion of classification and appraisal program | Ch. 226 | 691 |
| Motor vehicle fees, share of | Ch. 178 | 533 |
| Planning boards | Ch. 247 | 782 |
| Poor fund, use for improvement of buildings | Ch. 239 | 746 |
| Public funds, deposit, substitution of securities | Ch. 40 | 54 |
| Rural improvement districts comprising more than one county | Ch. 62 | 115 |
| Salaries of elected officials, changes during term | Ch. 98 | 193 |
| Secondary roads as emergency areas for construction projects | Ch. 118 | 226 |
| Seed and thresher's liens, destruction of | 11-113 | 1092 |
| Seed and thresher's liens retained | 11-112 | 1091 |
| Tax deed lands, preference to lessee in bidding | Ch. 75 | 159 |
| Taxation, additional four-mill levy | Ch. 33 | 44 |
| Taxation, exemption from special fuel tax | Ch. 66 | 127 |
| Water district notices, method of mailing, description of boundaries | Ch. 68 | 134 |
| Zoning of suburban areas | Ch. 246 | 774 |
| **COURTS** | | |
| Concurrent jurisdiction children's motor vehicle violations | Ch. 188 | 561 |
| Court reporters' fees | Ch. 163 | 495 |
| Crimes for which children over 16 may be prosecuted as adults | Ch. 24 | 32 |
| District | | |
| disqualification of judges, time for filing affidavit | Ch. 82 | 172 |
| third judge for fourth district | Ch. 229 | 699 |
| Judges' salaries increased | Ch. 212 | 640 |
| Justices and judges prohibited from acting as executors and administrators | Ch. 23 | 32 |
| Juvenile, probation officers' salaries increased | Ch. 115 | 223 |
| Proposed constitutional amendment, salaries of judges and justices | Ch. 92 | 187 |
| Supreme | | |
| Criminal Code Commission | Ch. 103 | 202 |
| rule-making power in civil procedure | Ch. 16 | 17 |
| See Treasury Fund Structure Act | | |
| **CREDIT UNION ACT** | | |
| Application of Act | 28 | 737 |
| By-laws, form of, amendment of | 7 | 723 |
| Certificate as evidence of corporate character | 6 | 723 |
| Certified copy of articles of incorporation as evidence | 5 | 723 |
| Change of place of business | 25 | 736 |
| Conversion from state to federal and from federal to state | 27 | 736 |
| Credit committee | 15 | 727 |
| Definitions | 2 | 721 |
| Directors | 14 | 726 |
| Dividends | 21 | 730 |
| Expulsion, withdrawal | 22 | 730 |
| Fees for filing and recording, disposition | 26 | 736 |
| Incorporation | 4 | 722 |
| Loans to members | 19 | 729 |
| Management | 12 | 725 |




HeinOnline -- 1963 vol. II 7 1963

| | Sec. | Page |
|---|---|---|
| Membership | 10 | 725 |
| Membership meetings | 11 | 725 |
| Officers | 13 | 726 |
| Power to borrow | 18 | 729 |
| Powers | 9 | 724 |
| Rates of interest | 17 | 728 |
| Reports, examinations and fees | 3 | 721 |
| Reserves | 20 | 729 |
| Restriction of use of words "credit union" in name | 8 | 723 |
| Right to amend or repeal Act preserved, severability | 24 | 736 |
| Supervisor, certain powers of | 23 | 730 |
| Supervisory committee | 16 | 728 |
| **CRIMES AND CRIMINAL PROCEDURE** | | |
| Crimes for which child over 16 may be prosecuted as an adult | Ch. 24 | 32 |
| **CRIMINAL CODE COMMISSION** | Ch. 103 | 202 |
| Adoption by legislature | 7 | 203 |
| Appointment and duties of members | 2 | 202 |
| Composition | 3 | 203 |
| Copies of suggested changes to bench and bar | 4 | 203 |
| Employment of secretary, use of research agency | 9 | 204 |
| Hearing on tentative final draft in Supreme Court | 6 | 203 |
| Intent and purpose of Act | 1 | 202 |
| Members serve without compensation | 10 | 204 |
| Organization and rules | 11 | 204 |
| Suggested changes by Supreme Court | 8 | 204 |
| Tentative final draft to Supreme Court | 5 | 203 |


# D


| | | |
|---|---|---|
| **DAIRY PRODUCTS** | | |
| Ice cream, weight per gallon | Ch. 20 | 25 |
| **DAMAGES** | | |
| Persons rendering emergency care not liable | Ch. 93 | 187 |
| **DEEDS** | | |
| Validating instruments of conveyance of real property, certified copies | Ch. 63 | 116 |
| **DEFINITION OF CERTAIN WORDS** | | |
| Security interest in personal property | 11-114 | 1092 |
| **DENTISTRY** | | |
| See Treasury Fund Structure Act. | | |
| **DEPARTMENT OF ADMINISTRATION ACT** | Ch. 271 | 1198 |
| Architects and consulting engineers, appointment of | 19 | 1205 |
| Architectural work, limitation on departments | 20 | 1205 |
| Authority to construct buildings | 16 | 1203 |
| Board of education, control of expenditures | 24 | 1206 |
| Building and construction, definitions | 14 | 1201 |
| Building programs, submission to legislature | 15 | 1202 |
| Certain state agencies abolished | 22 | 1206 |
| Construction of buildings, controller's powers and duties | 18 | 1204 |
| Controller | | |
| adoption of regulations, biennial reports | 5 | 1200 |
| chief executive officer | 2 | 1199 |




HeinOnline -- 1963 vol. II 8 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| custodian of state property | 10 | 1201 |
| duties | 4 | 1200 |
| Custodial care of capital buildings and grounds | 9 | 1200 |
| Divisions within department | 3 | 1199 |
| Fish and game department, authority to construct buildings removed | 23 | 1206 |
| Mailing facilities supervision | 6 | 1200 |
| Microfilm division established | 31 | 1210 |
| National Defense Facilities Act | | |
| acceptance of grants under | 26 | 1207 |
| contracts under | 25 | 1207 |
| Office space surveys and allocation | 8 | 1200 |
| Pecuniary interest in construction of buildings prohibited | 21 | 1205 |
| Pre-audit of liquidated claims, transportation requests | 29 | 1209 |
| Records, definition of | 12 | 1201 |
| Records, destruction of | 13 | 1201 |
| Records management program | 11 | 1201 |
| State athletic commission use of funds | 30 | 1209 |
| Supervision of construction of buildings | 17 | 1204 |
| Telephone switchboard supervision | 7 | 1200 |
| Title and purpose of Act | 1 | 1199 |
| Veterans and Pioneers Memorial Building, purpose and use | 27 | 1208 |
| Veterans Memorial Fund, use of | 28 | 1208 |
| **DEPARTMENT OF PUBLIC INSTITUTIONS ACT** | Ch. 266 | 1123 |
| Administrative head for each institution | 6 | 1127 |
| Administrative heads, powers and duties | 7 | 1127 |
| Board of public institutions | | |
| appointment and terms of members | 9 | 1128 |
| creation | 8 | 1127 |
| meetings, quorum | 12 | 1128 |
| officers, compensation | 11 | 1128 |
| powers and duties | 5 | 1126 |
| qualifications of members | 10 | 1128 |
| Creation, purposes of Act | 1 | 1124 |
| Definitions | 2 | 1125 |
| Director | 4 | 1125 |
| Industrial School | 59<br>63 | 1146<br>1147 |
| Insane persons, contracting for care of | 8 | 644 |
| Institutions controlled | 3 | 1125 |
| Leasing of agricultural land for use of institutions | 81 | 1154 |
| Local advisory committees | 7 | 1127 |
| Montana center for the aged | 57-58 | 1146 |
| Montana children's center | 69<br>77 | 1150<br>1152 |
| School for deaf and blind | | |
| control in board of education | 78 | 1153 |
| local executive board | 79-80 | 1153 |
| State hospital | 41 | 1138 |
| State hospital | 19<br>30 | 1130<br>1133 |
| State prison | 31<br>46 | 1133<br>1140 |
| Training school and hospital | 54<br>56 | 1144<br>1145 |
| Tuberculosis sanitarium | 47<br>53 | 1140<br>1144 |
| University system, board of education | 78 | 1153 |
| University system, local executive boards | 79-80 | 1153 |




HeinOnline -- 1963 vol. II 9 1963

| | Sec. | Page |
|---|---|---|
| Veterans' home | 13 | 1128 |
| | 18 | 1130 |
| Vocational school for girls | 64 | 1148 |
| | 68 | 1149 |

**DISTRICT COURTS**

See Courts

**DITCHES**

| | | |
|---|---|---|
| Cities and towns authority to borrow for protection | Ch. 158 | 477 |
| Counties, issuance of coupon bonds for protection | Ch. 136 | 272 |

**DIVORCE**

See Marriage and Divorce

| | | |
|---|---|---|
| **DRIVER LICENSE COMPACT** | Ch. 154 | 462 |

# E

**ELECTIONS**

| | | |
|---|---|---|
| Absentee ballots, time for making application | Ch. 124 | 233 |
| Absentee voting for school elections | Ch. 108 | 214 |
| Expenses of school elections | Ch. 104 | 205 |
| Municipal primary, sealing of voting machines | Ch. 57 | 110 |
| Pay rate for election officials | Ch. 46 | 82 |
| Recount of votes | | |
| Act supplemental to other laws | 15 | 69 |
| certification of results, procedure | 10 | 68 |
| conditions for | 3 | 65 |
| destruction of ballots unless upon court contest or recount | 17 | 71 |
| expense of | 14 | 69 |
| new certificate, effect of | 12 | 69 |
| provisions applicable to all elections | 2 | 65 |
| reconvening of board of canvassers | 11 | 68 |
| recount board, clerk | 7 | 67 |
| recount board, composition | 6 | 67 |
| recount board, notification and meetings | 8 | 67 |
| tie votes, procedure | 4 | 66 |
| tie votes, state senator or representative | 18 | 71 |
| tie votes, where indeterminable | 13 | 69 |
| total vote cast, formula | 5 | 67 |
| voting machines opened by recount board | 16 | 69 |
| witnessing by candidates and electors | 9 | 67 |
| Statement of meaning of referendum, initiative or constitutional amendment on ballot | Ch. 22 | 31 |

**EMBALMERS AND FUNERAL DIRECTORS**

See Morticians, State Board of
See Treasury Fund Structure Act.

**EMERGENCY CARE**

| | | |
|---|---|---|
| Persons rendering not liable in civil damages | Ch. 93 | 187 |

**ENGINEERS AND LAND SURVEYORS**

See Treasury Fund Structure Act.

**ESCHEATS**

See Treasury Fund Structure Act.




HeinOnline -- 1963 vol. II 10 1963

| | Sec. | Page |
|---|---|---|
| **EXECUTORS AND ADMINISTRATORS** | | |
| Bonds of, when not required | Ch. 119 | 227 |
| Estate appraisers, compensation of | Ch. 94 | 188 |
| Justices and judges prohibited from acting as | Ch. 23 | 32 |

# F

| | | |
|---|---|---|
| **FERTILIZER MATERIALS** | | |
| Cancellation of registration | 6 | 78 |
| Definitions | 1 | 72 |
| Labeling | 3 | 77 |
| Registration and licenses | 2 | 75 |
| Rules, regulations and hearings | 5 | 78 |
| **FIREARMS** | | |
| Regulation of use by children | Ch. 139 | 277 |
| **FIREMEN AND FIRE DEPARTMENTS** | | |
| Payment to relief associations, fire portions of premiums | Ch. 54 | 101 |
| Pension increase for additional service | Ch. 56 | 106 |
| Relief associations, duties of trustees, investment of surplus funds | 1 | 8 |
| See Treasury Fund Structure Act. | | |
| **FIRE DISTRICTS** | | |
| Audit of books by state examiner | Ch. 125 | 234 |
| Requirements for petitions to create, dissolve, change boundaries | Ch. 49 | 87 |
| **FISH AND GAME** | | |
| Approval by commission of projects on streams | Ch. 258 | 836 |
| Authority of commission to construct buildings removed | 23 | 1206 |
| Land acquisitions, considerations in making | | 1262 |
| Licenses, fees and classifications | 1 | 448 |
| Persons under 15 exempt from fishing license | 2 | 451 |
| Possession and shipment out of state of illegally taken game | Ch. 38 | 53 |
| Resident, for hunting and fishing license purposes | Ch. 23 | 39 |
| Residents class A-1 big game license, preference | Ch. 55 | 102 |
| Residents of Montana children's center, fishing without license | Ch. 36 | 48 |
| Salmon eggs, use as bait | Ch. 53 | 98 |
| Special licenses, period for re-application | Ch. 65 | 125 |
| Special nonresident antelope and deer licenses | 1 | 276 |
| Wardens' retirement system established | Ch. 130 | 257 |
| Wild turkey tags, fee | 3 | 452 |
| See Treasury Fund Structure Act | | |
| **FOOD DISTRIBUTORS, STATE BOARD** | | |
| See Treasury Fund Structure Act. | | |
| **FORESTS** | | |
| Fire protection districts, powers of board | Ch. 83 | 174 |
| Lumber cutting and scaling, duties of forester | Ch. 145 | 283 |
| Marking land and mining claims in national forests | 1 | 43 |
| See Treasury Fund Structure Act. | | |
| **FUNERAL DIRECTORS** | | |
| State Board of Morticians | Ch. 41 | 57 |

# G

| | | |
|---|---|---|
| **GENERAL SURVIVAL STATUTE** | | |
| Re-enacted | 1 | 15 |




HeinOnline -- 1963 vol. II 11 1963

| | Sec. | Page |
|---|---|---|
| **GRASS CONSERVATION** | | |
| See Treasury Fund Structure Act. | | |
| **H** | | |
| **HAIL INSURANCE** | | |
| Adjustments, time for appeal, options | Ch. 69 | 137 |
| See Treasury Fund Structure Act | | |
| **HIGHWAY PATROLMEN'S RETIREMENT SYSTEM** | | |
| See Treasury Fund Structure Act. | | |
| **HIGHWAYS AND HIGHWAY DEPARTMENT** | | |
| Approval of projects by fish and game commission | Ch. 258 | 836 |
| Buildings and improvements on recorded locations of new highways, not compensable | 2 | 281 |
| Controlled access to throughways and intersections | Ch. 156 | 470 |
| Filing of plats, where parcel of irregular shape and size | Ch. 91 | 183 |
| Lewis and Clark Highway established | Ch. 219 | 673 |
| Parks, share of gasoline tax | Ch. 223 | 680 |
| Recording of locations of new highways or controlled access facilities | 1 | 281 |
| Retrocession to state of concurrent police jurisdiction of Blackfeet highways | Ch. 157 | 477 |
| Secondary roads as emergency areas for construction projects | Ch. 118 | 226 |
| Toll bridge bonds, negotiable under Uniform Commercial Code | 11-117 | 1097 |
| See Treasury Fund Structure Act | | |
| **HISTORICAL SOCIETY** | | |
| Continued and perpetuated | Ch. 47 | 82 |
| Director to establish microfilm division | 31 | 1210 |
| See Treasury Fund Structure Act | | |
| **I** | | |
| **ICE CREAM** | | |
| Weight per gallon | Ch. 20 | 25 |
| **INDIANS** | | |
| Assumption by state of jurisdiction over Salish and Kootenai | Ch. 81 | 170 |
| Retrocession to state of concurrent police jurisdiction of Blackfeet highways | Ch. 157 | 477 |
| **INDUSTRIAL ACCIDENT BOARD** | | |
| Vocational rehabilitation, reference and account | Ch. 221 | 675 |
| See Treasury Fund Structure Act | | |
| **INDUSTRIAL SCHOOL** | | |
| See Department of Public Institutions | | |
| **INSANE PERSONS** | | |
| Department may contract with other institutions for care | 8 | 644 |
| Nonresidents, temporary commitment to state hospital | Ch. 198 | 592 |
| See Treasury Fund Structure Act | | |
| **INSTALLMENT SALES** | | |
| Finance charge limitations, Uniform Commercial Code | 11-152 | 1111 |
| **INSTITUTIONS DEPARTMENT** | | |
| Graduates of custodial institutions, increased higher education allowance | Ch. 128 | 256 |
| See Department of Public Institutions | | |




HeinOnline -- 1963 vol. II 12 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| **INSURANCE** | | |
| Disposition of on state buildings | Ch. 110 | 215 |
| Group, payroll deductions for state employees | Ch. 248 | 794 |
| Tax on net premiums, period extended | Ch. 78 | 165 |
| Waiver of sovereign immunity where insured | Ch. 240 | 748 |
| See Treasury Fund Structure Act | | |
| **INTEREST, LEGAL** | | |
| Exceptions under Uniform Commercial Code | 11-130 | 1102 |
| **J** | | |
| **JOINT TENANCY** | | |
| Conveyance without third party | Ch. 208 | 632 |
| **JUDGES** | | |
| See Courts | | |
| **JURORS** | | |
| Fees increased | Ch. 117 | 225 |
| **JUSTICES OF THE PEACE** | | |
| Fees and salaries increased | Ch. 184 | 551 |
| **L** | | |
| **LABOR AND INDUSTRY** | | |
| Apprenticeship council, membership and director | Ch. 160 | 482 |
| **LANDS, STATE** | | |
| See State Lands | | |
| **LEGISLATIVE ASSEMBLY** | | |
| Compensation of officers and employees | 1 | 1 |
| Mileage payments to members increased | Ch. 32 | 44 |
| **LEWIS AND CLARK HIGHWAY** | | |
| Established | Ch. 219 | 673 |
| **LIBRARIES** | | |
| Establishment of joint or regional with board of education | Ch. 249 | 795 |
| See Treasury Fund Structure Act | | |
| **LIENS** | | |
| Laws affected by Uniform Commercial Code | 11-118<br>11-129 | 1098<br>1101 |
| **LIMITATION OF ACTIONS** | | |
| Objection that action not taken in time, statute repealed | Ch. 7 | 7 |
| **LIQUOR CONTROL BOARD** | | |
| Membership increased | Ch. 268 | 1176 |
| Salaries and per diem | Ch. 151 | 458 |
| See Treasury Fund Structure Act | | |
| **LIVESTOCK** | | |
| Cattle protective districts | Ch. 181 | 542 |
| Definition of stolen livestock | Ch. 132 | 269 |
| Estrays, sheep and lamb included | Ch. 37 | 52 |




HeinOnline -- 1963 vol. II 13 1963

| | Sec. | Page |
|---|---|---|
| Forbidden on emergency area for road construction | Ch. 118 | 226 |
| Sheep, petition for removal from county | Ch. 135 | 271 |
| Trespassing on land or mining claims in national forests | Ch. 31 | 42 |
| See Treasury Fund Structure Act | | |


# M


**MARRIAGE AND DIVORCE**

| | | |
|---|---|---|
| Actions for breach of promise and alienation of affections abolished | Ch. 200 | 598 |
| Annulments | | |
| causes for | 2 | 503 |
| legitimacy of children | 3 | 503 |
| when and by whom commenced | 1 | 502 |
| Application for marriage license form | 3 | 706 |
| Divorce, ex parte foreign, presumptions as to domicile | Ch. 168 | 501 |
| Divorce, waiting period between service of process and hearing | Ch. 167 | 500 |
| Legal ages for contracting marriage, consent | 2 | 705 |
| License to marry | | |
| refusal for failure to support dependents | 7 | 709 |
| refusal to persons under influence of drugs or liquor | 6 | 709 |
| residents and nonresidents | 5 | 709 |
| Marriage within six months after divorce, unlawful | 11 | 712 |
| Montana Conciliation Law | | |
| jurisdiction of district courts as conciliation courts | 3 | 740 |
| powers of conciliation court | 5 | 745 |
| procedure to invoke jurisdiction | 4 | 742 |
| Nonsupport of wife or children, penalties | Ch. 179 | 539 |
| Oath as to waiver of five-day period between application and issuance of marriage license | 10 | 711 |
| Posting of notice of application for license, objections | 8 | 710 |
| Statement of intent of Act furnished to applicants | 4 | 708 |
| Transmittal of divorce information to registrar of vital statistics | Ch. 137 | 275 |
| Validiy of marriages | 9 | 711 |

**MAUSOLEUMS AND COLUMBARIUMS**

| | | |
|---|---|---|
| Limitation of actions against | 22 | 64 |

**MEDICINE**

See Treasury Fund Structure Act.

**MEMORIALS AND RESOLUTIONS**

| | |
|---|---|
| House Joint Memorials | |
| Agricultural production control measures, retention of voluntary participation provisions | 1284 |
| Fort Missoula military post, opposition to breaking up | 1279 |
| Minting of silver dollars in commemoration of centennial | 1286 |
| Public hearings on dams, preserves and refuges | 1287 |
| Reclamation Act, waiver of land limitation clause | 1278 |
| U. S. S. Helena, return of silver service | 1282 |
| United States lumber industry, marking of imports | 1276 |
| House Joint Resolutions | |
| Air pollution study, interim committee | 1310 |
| Constitutional amendment, election of president and vice president | 1303 |
| Constitutional amendment, removal of poll tax requirement | 1297 |
| Game management, Yellowstone National Park elk herd | 1300 |
| Hutton, Rick, gratitude for assistance to | 1308 |
| Legislative council, study of consolidation of retirement systems | 1306 |
| Legislative council, study of fidelity bonds | 1301 |
| Legislative council, study of property classification laws | 1305 |




HeinOnline -- 1963 vol. II 14 1963

| | Sec. | Page |
|---|---|---|
| Nutter, Donald G., Memorial Trophy Hall | | 1298 |
| Prisoners, commendation for refurbishing of furniture | | 1305 |
| Reclassification and reappraisal program, property tax equalization, study | | 1309 |
| Regents, study of names changes of university units | | 1302 |
| Senate Joint Memorials | | |
| Competitive rail freight rate structures | | 1288 |
| Federal aid and interstate highways, replacement of irrigation facilities | | 1292 |
| Highways, building additional primary system mileage | | 1294 |
| Indians, federal assistance to needy | | 1295 |
| Primary and secondary highways, increase in federal aid | | 1296 |
| Reclamation Act, waiver of land limitation clause above Canyon Ferry Dam | | 1290 |
| Senate Joint Resolutions | | |
| Boy Scouts, to hold 1968 Jamboree near Glacier Park | | 1313 |
| Constitutional amendment, legislative apportionment of states | | 1322 |
| Dead Man's Basin and Painted Rocks Reservoir, transfer from water board to highway commission | | 1320 |
| Governor's domestic relations committee, commendation | | 1312 |
| Legislative council, study of rules of House and Senate | | 1323 |
| Legislative council, study of state investment and depository practices | | 1316 |
| Legislative council, study of water and other resources | | 1319 |
| Montana Soldiers' Home, committee to study use and needs | | 1317 |
| State Laboratory Building, to be designated W. F. Cogswell building | | 1311 |
| State land concentrations, study by board of land commissioners | | 1321 |
| Senate Substitute for House Joint Memorial | | |
| Forest service and bureau of land management income for counties | | 1281 |
| **MICROFILM DIVISION** | | |
| Historical society director to establish | 31 | 1210 |
| **MILK** | | |
| See Treasury Fund Structure Act. | | |
| **MINES AND MINING** | | |
| Marking land and mining claims in national forests | 1 | 43 |
| **MINORS** | | |
| Legal capacity to borrow to finance higher education | Ch. 34 | 45 |
| **MONTANA CENTER FOR THE AGED** | | |
| See Department of Public Institutions | | |
| **MONTANA CHILDREN'S CENTER** | | |
| See Department of Public Institutions | | |
| **MONTANA CONCILIATION LAW** | | |
| See Marriage and Divorce | | |
| **MONTANA CREDIT UNION ACT** | | |
| See Credit Unions | | |
| **MONTANA FINE ARTS COMMISSION** | | |
| Abolished | 13 | 86 |
| See Treasury Fund Structure Act | | |
| **MONTANA RULES OF CIVIL PROCEDURE** | | |
| See Civil Procedure | | |




HeinOnline -- 1963 vol. II 15 1963

| | Sec. | Page |
|---|---|---|
| **MORTGAGES** | | |
| Laws affected by Uniform Commercial Code | 11-131<br>11-142 | 1102<br>1106 |
| **MORTICIANS, STATE BOARD OF** | | |
| Appeal to district and supreme courts | 16 | 62 |
| Appointment and term of office | 2 | 58 |
| Burial of cadavers | 19 | 63 |
| Definitions | 1 | 58 |
| Disposition of fees | 6 | 59 |
| Employees | 5 | 59 |
| Examinations for morticians | 9 | 60 |
| Funeral directing, license required | 7 | 59 |
| Hearing and notice on revocation and suspension of licenses | 15 | 62 |
| Intern mortician's license | 10 | 60 |
| License, fee and renewal | 11 | 60 |
| Meetings, quorum, rules and regulations | 4 | 59 |
| Morticians and funeral directors, exemption from liability, when | 22 | 64 |
| Morticians excepted from autopsy qualifications | 20<br>21 | 63<br>64 |
| Mortuaries, operation and licensing | 13 | 61 |
| Officers, compensation of members | 3 | 59 |
| Penalty provision | 17 | 63 |
| Qualifications for mortician's license | 8 | 59 |
| Reciprocity with other states | 12 | 60 |
| Refusal to grant, suspension and revocation of licenses | 14 | 61 |
| **MOTORBOATS** | | |
| Equipment required | 2 | 701 |
| Gasoline tax refunds removed | Ch. 224 | 683 |
| Gasoline tax share allocated to parks | Ch. 223 | 680 |
| Numbering and licensing by board of equalization | 1 | 700 |
| **MOTOR CARRIERS** | | |
| Appointment of supervisor authorized | Ch. 205 | 611 |
| Effect of written contract | 8-709 | 1083 |
| For hire operation defined | Ch. 204 | 608 |
| **MOTOR VEHICLES** | | |
| Additional fees, trucks, etc., and special mobile equipment | Ch. 150 | 453 |
| Age to be licensed as collector's item | Ch. 86 | 178 |
| Definition of stolen livestock for confiscation | Ch. 132 | 269 |
| Driver license compact | Ch. 154 | 462 |
| Examinations for operator's and chauffeur's licenses | Ch. 228 | 698 |
| Installment sales, finance charge limitations | 11-152 | 1111 |
| Lien filings under Uniform Commercial Code | 11-143 | 1107 |
| Marking of trucks | Ch. 133 | 269 |
| Reciprocity board, registration of interstate fleets | Ch. 206 | 613 |
| Time of assesment for taxation purposes | Ch. 245 | 771 |
| Traffic control signals | Ch. 211 | 638 |
| Traffic regulations, "Yield" signs | Ch. 96 | 190 |
| Unlawful operation by children, concurrent jurisdiction of courts | Ch. 188 | 561 |
| See Treasury Fund Structure Act | | |


# N


| | | |
|---|---|---|
| **NAMES** | | |
| Changes decreed in 1961-62 | | 1326<br>1327 |




HeinOnline -- 1963 vol. II 16 1963

| | Sec. | Page |
|---|---|---|
| **NATIONAL GUARD** | | |
| Army and air assistant adjutants general | Ch. 74 | 157 |
| Contracts for with United States Government | 25 | 1207 |
| **NURSERYMEN** | | |
| Seasonal, licensing | Ch. 121 | 229 |
| **NURSING** | | |
| License and renewal fees | Ch. 195 | 586 |
| See Treasury Fund Structure Act | | |

O

| | | |
|---|---|---|
| **OCCUPATIONAL DISEASE ACT** | | |
| See Treasury Fund Structure Act | | |
| **OIL AND GAS** | | |
| Laborers' and materialmen's liens, priority | Ch. 193 | 581 |
| State leases, payment of royalty semi-annually | Ch. 171 | 509 |
| Tax, withholding from proceeds of royalty interest | Ch. 80 | 169 |
| See Treasury Fund Structure Act | | |
| **OPEN MEETINGS** | | |
| Public or governmental bodies | Ch. 159 | 480 |
| **OPTOMETRY** | | |
| See Treasury Fund Structure Act | | |
| **OSTEOPATHY** | | |
| See Treasury Fund Structure Act | | |

P

| | | |
|---|---|---|
| **PHARMACY** | | |
| See Treasury Fund Structure Act | | |
| **PHYSICAL THERAPISTS** | | |
| See Treasury Fund Structure Act | | |
| **PLANNING BOARDS** | | |
| Adoption of master plan, policy and pattern of development | 15 | 790 |
| Appeals from decisions of city council | 23 | 793 |
| Application for approval of plat | 17 | 792 |
| Approval by city council | 22 | 793 |
| Approval or disapproval of applications | 20 | 792 |
| Citizen members, qualifications | 3 | 784 |
| City-county, members, terms of officers | 4 | 784 |
| City or city-county authorized | 1 | 782 |
| Definitions, master plan, plat | 2 | 783 |
| Expenses while attending conferences | 7 | 785 |
| Factors for approval of application for plat | 18 | 792 |
| Fees for applications | 21 | 793 |
| Funds for operation, tax levy | 9 | 786 |
| Jurisdictional area | 11 | 788 |
| Master plan, contents | 12 | 788 |
| Master plan, policies | 10 | 787 |
| Notice of hearing prior to adoption of master plan | 13 | 790 |
| Plats of subdivisions, approval by board | 16 | 791 |




HeinOnline -- 1963 vol. II 17 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| Powers and duties | 8 | 785 |
| Publication of regulations governing applications | 19 | 792 |
| Quorum, official action | 6 | 785 |
| Removal of citizen appointee | 5 | 785 |
| Resolution adopting master plan and recommending ordinances | 14 | 790 |
| Validation of prior ordinances or resolutions | 24 | 793 |
| Zoning of suburban areas | Ch. 246 | 774 |
| **PLUMBERS** | | |
| See Treasury Fund Structure Act | | |
| **PRINTING** | | |
| State, requirements | Ch. 242 | 753 |
| **PRISONS** | | |
| See State Prison | | |
| **PROBATION OFFICERS** | | |
| Salaries increased | Ch. 115 | 223 |
| **PROPERTY** | | |
| Accession under Uniform Commercial Code | 11-147 | 1110 |
| Fixtures under Uniform Commercial Code | 11-146 | 1110 |
| See Uniform Disposition of Unclaimed Property Act | | |
| **PUBLIC ACCOUNTANTS** | | |
| See Treasury Fund Structure Act | | |
| **PUBLIC EMPLOYEES RETIREMENT SYSTEM** | | |
| Retirement allowances and death benefits | Ch. 207 | 625 |
| See Treasury Fund Structure Act | | |
| **PUBLIC FUNDS** | | |
| County, city and town, deposit, substitution of securities | Ch. 40 | 54 |
| Investment of long term investment fund, types of securities authorized | Ch. 67 | 129 |
| State funds, deposit, substitution of securities | Ch. 35 | 45 |
| **PUBLIC HEALTH** | | |
| Infant morbidity and mortality information, furnished to state board | Ch. 197 | 591 |
| See Water Pollution | | |
| See Treasury Fund Structure Act | | |
| **PUBLIC LANDS** | | |
| Corner records, marking and filing | Ch. 202 | 604 |
| See State Lands | | |
| **PUBLIC OFFICERS AND EMPLOYEES** | | |
| Allowance of air mileage | Ch. 123 | 232 |
| Salary increases for appointed officials | Ch. 225 | 687 |
| Salary schedule | Ch. 212 | 640 |
| Subsistence allowance increased | Ch. 116 | 224 |
| **PUBLIC RECORDS** | | |
| Destruction of old tax records by board | Ch. 187 | 561 |
| Destruction after 25 years | Ch. 90 | 183 |
| See Department of Administration Act | Ch. 271 | 1201 |
| **PUBLIC UTILITIES** | | |
| Penalty for malicious injuries to property | Ch. 174 | 511 |




HeinOnline -- 1963 vol. II 18 1963

| | Sec. | Page |
|---|---|---|
| **PUBLIC WELFARE** | | |
| County poor fund, use for improvement of buildings | Ch. 239 | 746 |
| Eligibility for general relief, time as patient | Ch. 99 | 194 |
| Personnel costs, reimbursement by county boards | Ch. 44 | 79 |
| Recipient of relief working for counties, workmen's compensation coverage | Ch. 180 | 540 |
| Refusal by relief recipient to work for county | Ch. 180 | 541 |
| See Treasury Fund structure Act | | |
| **R** | | |
| **RADIO AND TELEVISION** | | |
| Publication of legal notice by | Ch. 149 | 452 |
| **RAILROADS** | | |
| Authority to borrow money | 11-148 | 1110 |
| Authority to issue and secure bonds | 11-149 | 1110 |
| **REAL ESTATE** | | |
| Subdivisions and subdivided lands, regulation of | Ch. 191 | 575 |
| **REAL ESTATE LICENSE ACT** | Ch. 250 | 796 |
| **REAL PROPERTY** | | |
| Joint tenancy conveyances | Ch. 208 | 632 |
| Validating instruments of conveyance, certified copies | Ch. 63 | 116 |
| **RECORDS** | | |
| Retention of secured transactions filing under Uniform Commercial Code | 11-114 | 1109 |
| See Public Records | | |
| **RESOLUTIONS** | | |
| See Memorials and Resolutions | | |
| **REVISED CODES OF MONTANA** | | |
| Replacement volumes, adoption of | Ch. 18 | 23 |
| **RURAL IMPROVEMENT DISTRICTS** | | |
| Comprising more than one county | Ch. 62 | 115 |
| **S** | | |
| **SALES** | | |
| See Uniform Commercial Code | | |
| **SCHOOLS AND SCHOOL DISTRICTS** | | |
| Absentee voting for school elections | Ch. 108 | 214 |
| Additional trustees of high school districts, nominating districts | Ch. 222 | 677 |
| Annexation and consolidation of school districts | Ch. 140 | 277 |
| Attendance at high school out of county, transfer budgets | 13 | 1171 |
| Attendance of high school pupils outside county of residence | Ch. 21 | 27 |
| Attendance outside district at parents' expense | Ch. 176 | 518 |
| Attendance outside district, disapproval where not sufficient room | Ch. 251 | 814 |
| Audit of books by state examiner | Ch. 141 | 278 |
| Board of education, control of expenditures | 24 | 1206 |
| Budgets | | |
| basic high school levy | 14 | 1172 |
| elementary schools, schedule | 1 | 1155 |




HeinOnline -- 1963 vol. II 19 1963

| | Sec. | Page |
|---|---|---|
| elementary schools, tax levy | 2 | 1158 |
| high schools, schedule | 15 | 1174 |
| Children's center inmates attending Twin Bridges high school, reimbursement for | Ch. 162 | 492 |
| Common school levy | 10 | 1166 |
| Computation of population of school district | Ch. 203 | 607 |
| County high schools | | |
| abolishing or unifying procedure | Ch. 261 | 844 |
| establishment of branches | Ch. 152 | 460 |
| County treasurer, keeping of accounts | 11 | 1167 |
| Custodial institution graduates, increased higher education allowance | Ch. 128 | 256 |
| Elections for additional district school taxes | 12 | 1168 |
| Expenses of elections | Ch. 104 | 205 |
| Foundation program, administration | Ch. 267 | 1155 |
| Increase in ANB for budget purposes | Ch. 265 | 1121 |
| Isolated school, application for approval | 7 | 1163 |
| Investment of funds, credit of interest | Ch. 13 | 13 |
| Joint districts, tax levy | 3 | 1158 |
| Mentally retarded children, training in public schools | Ch. 243 | 755 |
| Nonoperating district budgets | Ch. 182 | 543 |
| Taxation, exemption from special fuel tax | Ch. 66 | 127 |
| Teachers, age at which services terminated | Ch. 144 | 282 |
| Teachers' Retirement System | | |
| computation of benefits | Ch. 209 | 632 |
| minimum retirement benefits and financing | Ch. 216 | 654 |
| Transportation, budgets and levies for | Ch. 106 | 206 |
| Trustees' duties, indigent children care removed | Ch. 76 | 159 |
| Trustees, rentals of school owned employee housing | Ch. 175 | 514 |
| Tuition for out of district attendance, institutions | Ch. 107 | 210 |
| Vocational training centers, tuition | Ch. 77 | 163 |
| See Treasury Fund structure Act | | |
| **SCHOOL FOR DEAF AND BLIND** | | |
| See Department of Public Institutions | Ch. 266 | 1153 |
| **SECURITIES** | | |
| Registration, suspension | Ch. 71 | 153 |
| Uniform Act for Simplification of Fiduciary Transfers | Ch. 101 | 196 |
| See Treasury Fund structure Act | | |
| **SMALL TRACT FINANCING ACT** | Ch. 177 | 522 |
| **SOCIAL SECURITY** | | |
| See Treasury Fund Structure Act | | |
| **SOIL CONSERVATION DISTRICTS** | | |
| Financing by levy of assessments | Ch. 253 | 823 |
| **SOLDIERS' HOME** | | |
| See Treasury Fund Structure Act | | |
| **STATE ATHLETIC COMMISSION** | | |
| Use of receipts | 30 | 1209 |
| **STATE BOARD OF EQUALIZATION** | | |
| Meetings and schools for county assessors, visits to counties | Ch. 227 | 693 |
| Suspense account for refunds established | Ch. 126 | 236 |
| **STATE BOARD OF HEALTH** | | |
| Transportation of dead bodies, rules and regulations | 18 | 63 |
| See Treasury Fund structure Act | | |




HeinOnline -- 1963 vol. II 20 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| **STATE BOARD OF MORTICIANS** | | |
| See Morticians | | |
| **STATE BOARDS AND OFFICES** | | |
| Meetings open to public | Ch. 159 | 480 |
| Obsolete statutes repealed | Ch. 129 | 257 |
| **STATE BUILDINGS** | | |
| Disposition of insurance on | Ch. 110 | 215 |
| **STATE CAPITOL** | | |
| Board of examiners authorized to borrow for remodeling | Ch. 257 | 833 |
| **STATE CONTROLLER** | | |
| See Department of Administration Act | | |
| **STATE EMPLOYEES** | | |
| Payroll deductions for group insurance | Ch. 248 | 794 |
| **STATE EXAMINER** | | |
| Audit of books of fire districts, fees | Ch. 125 | 234 |
| Audit of books of school districts | Ch. 141 | 278 |
| See Treasury Fund structure Act | | |
| **STATE FINANCE** | | |
| Deposit of state funds, substitution of securities | Ch. 35 | 45 |
| Investment of funds, physical education plant at industrial school | Ch. 256 | 830 |
| Investment of long term investment fund, types of securities authorized | Ch. 67 | 129 |
| **STATE GOVERNMENT** | | |
| Support of, 1963-1964 tax levy | Ch. 79 | 168 |
| See Treasury Fund structure Act | | |
| See Department of Administration Act | | |
| **STATE HOSPITAL** | | |
| See Department of Public Institutions Act | | |
| **STATE INSTITUTIONS** | | |
| Graduates' higher education, allowance increased | Ch. 128 | 256 |
| State industrial school | | |
| fees increased, physical education plant | 1 | 826 |
| investment of state funds for physical education plant | Ch. 256 | 830 |
| physical education plant authorized | Ch. 255 | 829 |
| Vocational school for girls, fees increased | 2 | 828 |
| See Department of Institutions Act | | |
| See Treasury Fund Structure Act | | |
| **STATE LANDS** | | |
| Bidders for leases, deposit required | Ch. 185 | 554 |
| Brush disposal and timber stand improvement, fees for | 219 | 431 |
| Leasing | | |
| change in terms | Ch. 120 | 228 |
| crop share rental basis | 2 | 840 |
| definitions, formula for fixing rental | 6 | 843 |
| policy of state as to appraisal and leasing | 1 | 840 |
| qualifications of lessees, limits on terms | 5 | 842 |
| renewal, preference right of lessee | 3 | 841 |
| value of improvements, fixing by arbitrators, appeal | 4 | 842 |
| **STATE OFFICERS AND EMPLOYEES** | | |
| Allowance of air mileage | Ch. 123 | 232 |




HeinOnline -- 1963 vol. II 21 1963

| | Sec. | Page |
|---|---|---|
| Salary increases for appointed officials | Ch. 225 | 687 |
| Salary schedule, elected officials | Ch. 212 | 640 |
| Subsistence allowance increased | Ch. 116 | 224 |
| **STATE PARKS** | | |
| Disposal of fees and charges | 26 | 301 |
| Gasoline tax share for parks used for motor boating | Ch. 223 | 680 |
| **STATE PRISON** | | |
| Interstate agreement on detainers | Ch. 215 | 646 |
| See Department of Public Institutions | | |
| See Treasury Fund Structure Act | | |
| **STATE TRAINING SCHOOL AND HOSPITAL** | | |
| Payment of costs of hearing and transportation of persons admitted | 9 | 644 |
| See Department of Public Institutions | | |
| **SUBDIVISIONS AND SUBDIVIDED LANDS** | | |
| Regulation by state real estate commissioner | Ch. 191 | 575 |
| **SUPERSEDEAS BOND** | | |
| Form for added to M. R. Civ. P. | 1 | 4 |
| **SUPREME COURT** | | |
| See Courts | | |


# T


| | | |
|---|---|---|
| **TAXATION** | | |
| Cigarette excise, as direct tax on consumer | Ch. 97 | 191 |
| Cigarette tax for World War I honorarium | Ch. 270 | 1191 |
| Corporation license, regulations | Ch. 186 | 554 |
| Counties, additional four-mill levy | Ch. 33 | 44 |
| Destruction of old tax records by board | Ch. 187 | 561 |
| Gasoline tax | | |
| allocation to state park fund | Ch. 223 | 680 |
| motor boat use removed from refund | Ch. 224 | 683 |
| tax exemption certificates, use by governmental agencies | Ch. 64 | 117 |
| Gasoline dealers | | |
| date of mailing as date of filing | 1 | 140 |
| enforcement and examination of records by board | 2 | 140 |
| failure to file statement or pay tax, lien | 5 | 144 |
| gasoline and aviation gasoline defined | 3 | 141 |
| invoice of dealers, contents | 6 | 145 |
| special fuel dealers' and users' licenses and permits | 8 | 147 |
| special fuel dealers' monthly returns and payments | 9 | 150 |
| special fuel included in definitions | 7 | 145 |
| statements to board, amount of tax, aviation exemption certificates | 4 | 142 |
| Gasoline refunds, time extended | Ch. 17 | 19 |
| Income | | |
| benefits under federal employees retirement Act exempt | Ch. 58 | 112 |
| credits and refunds, interest | 3 | 597 |
| exemptions, separate returns | 2 | 593 |
| nonresident, adjusted gross, proration of deductions | Ch. 237 | 738 |
| nonresident, officers of corporations | 1 | 593 |
| penalties for violations | 3 | 602 |
| returns and payment of tax, penalty and interest, refunds and credits | 1 | 600 |
| Revision of returns, application, hearing, adjustments | 2 | 602 |




HeinOnline -- 1963 vol. II 22 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| Inheritance, transfers totally exempt | Ch. 218 | 670 |
| Levy by counties for completion of classification and appraisal program | Ch. 226 | 691 |
| Levy of additional 11½ mills for county poor funds | Ch. 262 | 852 |
| Motor vehicles | | |
| division of fees between counties and cities and towns | Ch. 178 | 533 |
| time for assessment | Ch. 245 | 771 |
| Motor and diesel fuel, taxable uses, collection | Ch. 73 | 156 |
| Net premiums of insurers, period extended | Ch. 78 | 165 |
| Oil and gas, withholding of tax from proceeds of royalty interest | Ch. 80 | 169 |
| Personal property, collection | Ch. 165 | 498 |
| Personal property, tax liens on after-acquired | Ch. 166 | 500 |
| Special fuel, exemption of | Ch. 66 | 127 |
| Support of state government, 1963-1964 tax levy | Ch. 79 | 168 |
| Suspense account for board of equalization | Ch. 126 | 236 |
| Tax deed lands, preference to lessee in bidding | Ch. 75 | 159 |
| See Treasury Fund Structure Act | | |
| **TELEVISION** | | |
| Alteration of district boundaries and annexation | Ch. 48 | 87 |
| Publication of legal notice by | Ch. 149 | 452 |
| **TITLE ABSTRACTERS** | | |
| See Treasury Fund Structure Act | | |
| **TRAINING SCHOOL AND HOSPITAL** | | |
| Payment of costs of hearing and transportation of persons admitted | 9 | 644 |
| See Department of Public Institutions | | |
| **TREASURY FUND STRUCTURE ACT** | Ch. 147 | 285 |
| Aeronautics commission | | |
| license tax allocated to | 214 | 427 |
| moneys of, receipt and disbursement | 220 | 432 |
| Agriculture | | |
| bean warehousemen, disposition of fees | 32 | 304 |
| commercial feeds, disposition of registration fee | 39 | 307 |
| commercial feeds, salaries and expenses of chemist's agents | 40 | 308 |
| commercial fertilizer, disposition of inspection fees | 36 | 305 |
| commercial fertilizer, disposition of registration fees | 35 | 304 |
| commercial fertilizer, reports of analyses | 34 | 304 |
| commissioner, disposition of fees | 27 | 302 |
| egg dealers' license fees, disposition | 42 | 308 |
| egg seals, disposition of fees from sale of | 43 | 308 |
| grain inspectors fees | 28 | 302 |
| grain storage administration, disposition of inspection fees | 29 | 302 |
| Montana quality label, disposition of moneys from sale of | 44 | 309 |
| mustard seed, disposition of license fees | 38 | 307 |
| mustard seed inspection, disposition of fees | 37 | 306 |
| poultry board, disposition of fees | 41 | 308 |
| protein test fees, disposition of | 30 | 303 |
| sealers of grain, disposition of fees | 33 | 304 |
| trust assets of rural rehabilitation corporation, disposition | 45 | 309 |
| warehousemen, license and fee disposition | 31 | 303 |
| Appropriations, unexpended, disposal of | 14 | 294 |
| Architects, examination and license fees, disposition | 140<br>141 | 367<br>368 |
| Athletic commission, tax on gross receipts, disposition | 162<br>163 | 387 |
| Attorneys | | |
| admission to bar, disposition of fees | 83 | 335 |




HeinOnline -- 1963 vol. II 23 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| complaints against, payment of witness expense | 84 | 335 |
| examining board, compensation and expenses | 82 | 335 |
| license tax, disposition of | 81 | 334 |
| Barbers, receipts of board, disposition, disbursements | 138 | 366 |
| | 139 | 367 |
| Boiler inspection, engineers' license fees, disposition | 167 | 390 |
| Budget, submission to legislature, form, contents | 15 | 294 |
| Capitol building land grant | | |
| dedication of funds | 50 | 310 |
| disposition of revenue | 49 | 310 |
| Chiropody, funds of board, disposition, disbursement | 130 | 361 |
| | 132 | 363 |
| Chiropractic, examination and renewal fees, disposition | 142 | 368 |
| Cosmetology, receipts of board, disposition | 135 | 364 |
| Courts, Supreme, clerk, disposition of filing fees | 87 | 336 |
| Definitions of Act to supersede previous definitions | 3 | 288 |
| Dentistry, receipts of board, disposition, citation of Act | 147 | 371 |
| | 151 | 376 |
| Disbursement of moneys, by appropriations, laws and contracts | 7 | 290 |
| Embalmers and funeral directors, fees, disposition, disbursements | 136 | 364 |
| | 137 | 366 |
| Engineers and land surveyors, funds of board, disposition | 123 | 356 |
| Escheats | | |
| estates, disposal of proceeds of sales | 13 | 293 |
| property, disposition of | 110 | 350 |
| | 117 | 354 |
| special assistant attorney general | 115 | 353 |
| Fire departments | | |
| fire insurance premium tax, deposit of | 191 | 412 |
| firemen's claims, payment, administration of act, interest earnings | 192 | 412 |
| | 194 | 413 |
| premium taxes for relief associations, disposition of | 69 | 324 |
| | 70 | 325 |
| Fish and game, moneys of commission, disposition | 159 | 382 |
| Food distributors' board, disposition of fees | 240 | 446 |
| Forests | | |
| conservation experiment station, income, disposition of | 234 | 444 |
| fire protection moneys, deposit and disposition | 215 | 429 |
| | 219 | 433 |
| Funds abolished | 239 | 446 |
| Funds established | 2 | 286 |
| Future moneys, subfunds | 3 | 288 |
| Grants of educational institutions deposit of income | 24 | 301 |
| Grass conservation, fees against districts, disposition, disbursements | 155 | 379 |
| | 156 | 380 |
| Hail insurance | | |
| deposit and expenditure of funds | 74 | 329 |
| | 77 | 333 |
| reinsurance authorized | 74 | 329 |
| Highway patrolmen's retirement system, account established | 201 | 419 |
| | 205 | 422 |
| Highways and highway department | | |
| highway moneys, disposition of | 212 | 426 |
| Historical society | | |
| gifts, donations and legacies, disposition | 47 | 310 |
| salary of librarian and assistants | 46 | 310 |
| transportation of books, payment of | 48 | 310 |
| Income and interest moneys, claims to be paid from | 25 | 301 |




HeinOnline -- 1963 vol. II 24 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| Industrial accident board | | |
| fees and revenues, disposition | 164 | 388 |
| | 166 | 390 |
| funds and accounts, handling of | 168 | 391 |
| | 195 | 413 |
| Insane persons, moneys of, disposition | 231 | 442 |
| Insurance, examination fees collected by commissioner, disposition of | 72 | 327 |
| Investments | | |
| according to unified plan | 16 | 296 |
| accounts kept by treasurer | 19 | 299 |
| payments from, how made | 22 | 300 |
| requested by departments | 17 | 298 |
| Library, law | | |
| approval of accounts | 85 | 335 |
| session law index, assistance | 86 | 336 |
| Limitation on payments from subfunds, accounts or funds | 23 | 301 |
| Liquor control, disposition of income from sales | 211 | 426 |
| Livestock commission, funds, accounts, fees and revenues | 88 | 336 |
| | 109 | 349 |
| Medicine, license fees, disposition, disbursements | 128 | 359 |
| | 129 | 361 |
| Milk, income, licenses and fines, disposition | 157 | 380 |
| | 158 | 382 |
| Montana fine arts commission, moneys collected for, disposition | 227 | 436 |
| Motor vehicles, registration and license fees, disposition | 228 | 436 |
| New accounts, creation and abolition | 5 | 289 |
| Nursing, fees collected under Act, disposition | 118 | 354 |
| Occupational Disease Act | | |
| costs and disbursements, payment of | 190 | 411 |
| fines for refusal of inspection of records | 173 | 405 |
| legal action by board | 189 | 411 |
| Oil and gas, moneys of commission, disposition | 160 | 383 |
| | 161 | 386 |
| Optometry, fees and penalties, disposition | 120 | 355 |
| | 122 | 356 |
| Osteopathy, license fees, disposition | 145 | 370 |
| | 146 | 371 |
| Pharmacy, fees and fines, disposition | 134 | 364 |
| Physical therapists, examination fees, disposition | 133 | 363 |
| Plumbers, license fees, disposition, disbursements | 143 | 368 |
| | 144 | 370 |
| Public accountants, funds received under Act, disposition | 233 | 444 |
| Public employees' retirement system, fund abolished, account established | 197 | 415 |
| Public health, sanitarians' registration fees, disposition | 119 | 354 |
| Public welfare, federal funds, disposition | 210 | 426 |
| Records of funds and accounts, maintenance of, procedures | 6 | 289 |
| Schools | | |
| agricultural experiment station income, disposition | 235 | 444 |
| federal aid, disposition of funds | 67 | 324 |
| foundation program | 52 | 311 |
| | 60 | 319 |
| grain inspection laboratory inspection fees, disposition | 236 | |
| | 237 | 445 |
| interest and income moneys, apportionment | 226 | 436 |
| public school fund as subfund | 223 | 434 |
| school lunch Act, disposition of federal funds | 65 | 323 |
| surplus property, disposition of receipts | 66 | 323 |
| teachers' certificates, disposition of fees | 62 | 321 |




HeinOnline -- 1963 vol. II 25 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| textbooks, disposition of license and bond proceeds | 63 | 321 |
| | 64 | 323 |
| transportation reimbursement to districts | 61 | 320 |
| wool laboratory moneys, disposition | 238 | 445 |
| Sections repealed | 242 | 447 |
| Securities Act, disposition of moneys | 71 | 325 |
| Sinking funds, investment by depository board | 10 | 292 |
| Social security, employee accounts | 198 | 416 |
| | 200 | 419 |
| Soldiers' home, money of deceased members not claimed, disposition | 232 | 443 |
| State board of health, federal aid for hospital construction, disposition | 68 | 324 |
| State examiner, examinations and fees, disposition | 222 | 433 |
| State institutions | | |
| retention of certain moneys | 12 | 293 |
| support of, deposit of moneys | 11 | 292 |
| State lands, investment of permanent funds and income moneys | 224 | 435 |
| | 225 | 436 |
| State parks commission, disposal of fees, charges and gift moneys | 26 | 301 |
| State prison | | |
| employment of prisoners, payment | 230 | 441 |
| receipts from prison industries, disposition | 229 | 441 |
| State treasurer | | |
| general fiscal duties | 8 | 290 |
| treasurer of state agencies, deposit of moneys | 9 | 291 |
| Suspense and investment funds authorized | 4 | 288 |
| Taxation | | |
| cigarettes, subfund in sinking fund established | 209 | 425 |
| disposition of various miscellaneous tax revenues | 51 | 311 |
| gasoline dealers, disposition of funds | 213 | 427 |
| | 214 | 429 |
| gasoline dealers, penalties, exemption certificates | 221 | 433 |
| levies on livestock, limitation, disposition | 109 | 349 |
| sheep tax revenue, disposition | 89 | 336 |
| Teachers' retirement system, moneys collected under Act, disposition of | 196 | 414 |
| Title abstracters, funds of board, disposition, reports | 124 | 356 |
| | 125 | 357 |
| Trust and legacy fund | | |
| annual transfer of interest | 20 | 299 |
| investment | 18 | 299 |
| payments from subfunds | 21 | 300 |
| Unemployment compensation, account established, deposits, administration | 206 | 422 |
| | 208 | 425 |
| Veterans memorial commission, moneys, disposition | 163 | 387 |
| Veterinaries, funds of board, disposition, examinations to practice | 126 | 357 |
| | 127 | 359 |
| Waters and irrigation | | |
| conservation board's moneys, disposition | 241 | 446 |
| deposit and expenditure of board's funds | 78 | 333 |
| | 80 | 334 |
| Water well contractors, receipts and license fees, disposition, disbursements | 152 | 376 |
| | 154 | 379 |

**TRUST INDENTURES**

| | | |
|---|---|---|
| See Small Tract Financing Act | Ch. 177 | 522 |

**TUBERCULOSIS SANITARIUM**

See Department of Public Institutions




HeinOnline -- 1963 vol. II 26 1963

# U


| | Sec. | Page |
|---|---|---|
| **UNCLAIMED PROPERTY** | | |
| Limitation by Uniform Commercial Code | 11-116 | 1097 |
| See Uniform Disposition of Unclaimed Property Act | | |
| **UNEMPLOYMENT COMPENSATION** | | |
| Benefit schedule | 1 | 1178 |
| Contributions, minimum reserves | 3 | 1185 |
| Definitions, gross misconduct | 4 | 1189 |
| Effective date of Act | 7 | 1191 |
| Disqualification for benefits | 2 | 1181 |
| See Treasury Fund Structure Act | | |
| **UNIFORM ACT FOR THE SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS** | Ch. 101 | 196 |
| Adverse claims | 5 | 199 |
| Assignment by a fiduciary | 3 | 198 |
| Definitions | 1 | 197 |
| Evidence of appointment or incumbency | 4 | 198 |
| Non-liability of corporation or transfer agent | 6 | 199 |
| Non-liability of third persons | 7 | 199 |
| Registration in name of fiduciary | 2 | 197 |
| Short title | 11 | 200 |
| Tax obligations | 9 | 200 |
| Territorial application | 8 | 200 |
| Uniformity of interpretation | 10 | 200 |
| **UNIFORM COMMERCIAL CODE** | | |
| Amendments to existing laws | | |
| acquisition of property by accession under Act | 11-147 | 1110 |
| application of Act to exchange laws | 11-151 | 1111 |
| application of Act to sales laws | 11-150 | 1111 |
| auctioneer's authority | 11-145 | 1109 |
| banking, deposits in insolvent banks | 11-102 | 1080 |
| banks' authority to accept and issue drafts | 11-103 | 1081 |
| banks, debts of liquidated, order of payment | 11-104 | 1081 |
| cities and towns, funding or refunding bonds, negotiability | 11-108 | 1087 |
| cities and towns, indenture for security of bonds | 11-107 | 1084 |
| cities and towns, issuance of bonds for urban renewal | 11-109 | 1087 |
| cities and towns, municipal undertaking bonds | 11-106 | 1083 |
| civil procedure code sections | 11-157 to 11-171 | 1114 to 1121 |
| contracts, what must be in writing | 11-110 | 1088 |
| counties, what indexes to be kept | 11-111 | 1088 |
| definition of certain words | 11-114 | 1092 |
| fees of county clerks | 11-115 | 1095 |
| finance charge limitations | 11-152 | 1111 |
| fixtures, on property of another | 11-146 | 1110 |
| grain, possession by warehouseman as bailment | 11-101 | 1079 |
| highway toll bridge bonds, negotiability | 11-117 | 1097 |
| legal interest on money lent | 11-130 | 1102 |
| liens, as affected by Act | 11-118 to 11-129 | 1098 to 1101 |
| mortgages, laws affected by Act | 11-131 to 11-142 | 1102 to 1106 |
| motor carriers, effect of written contract | 8-709 | 1083 |
| motor vehicles, filing of liens, rights, procedure, fees | 11-143 | 1107 |
| railroads, authority to borrow money | 11-148 | 1110 |
| railroads, issuing and securing bonds | 11-149 | 1110 |
| refunding bonds, terms, negotiability | 11-153 | 1112 |




HeinOnline -- 1963 vol. II 27 1963

| | Sec. | Page |
|---|---|---|
| secured transactions filings, retention for 8 years | 11-144 | 1109 |
| seed and thresher's liens, destruction of | 11-113 | 1092 |
| seed and thresher's liens, retained | 11-112 | 1091 |
| unclaimed property laws, limitation | 11-116 | 1097 |
| warehousemen, penalties against | 11-154<br>11-155 | 1113<br>1114 |
| water conservation bonds, negotiability | 11-156 | 1114 |
| Bank deposits and collections | | |
| agency status of collection banks | 401 | 961 |
| applicability of Article | 4-102 | 957 |
| bank as holder in due course | 4-209 | 967 |
| banks, definition of types | 4-105 | 960 |
| branch or separate office of a bank | 4-106 | 960 |
| charge-back or refund, right of | 4-212 | 969 |
| charging customer's account | 4-401 | 974 |
| check over 6 months old | 4-404 | 975 |
| collection by written notice, liability of secondary party | 4-210 | 967 |
| customer's right to stop payment, burden of proof of loss | 4-403 | 975 |
| death or incompetence of customer | 4-405 | 975 |
| definitions and index of definitions | 4-104 | 958 |
| delay or waiver by collecting bank | 4-108 | 961 |
| documentary drafts, bank's duty | 4-501 | 977 |
| documentary drafts, presenting bank's responsibility, duty on dishonor | 4-503 | 978 |
| effect of instructions | 4-203 | 963 |
| final payments, credits available for withdrawal | 4-213 | 970 |
| insolvency and preference | 4-214 | 971 |
| liability to customer for wrongful dishonor | 4-402 | 974 |
| media of remittance, provisional and final settlement | 4-211 | 967 |
| methods of sending and presenting | 4-204 | 963 |
| notice, stop order, process, setoff | 4-303 | 973 |
| payor bank's responsibility for late return of items | 4-302 | 973 |
| presentment of "on arrival" drafts | 4-502 | 977 |
| privilege of presenting bank to deal with goods, security interest | 4-504 | 978 |
| process of posting, definition | 4-109 | 961 |
| responsibility for collection, when action seasonable | 4-202 | 962 |
| revocation of settlement by payor bank, recovery on demand items, time | 4-301 | 972 |
| security interest of collecting bank | 4-208 | 966 |
| subrogation on improper payment, payor bank's right | 4-407 | 977 |
| supplying missing indorsement | 4-205 | 964 |
| time of receipt of items | 4-107 | 960 |
| transfers between banks | 4-206 | 964 |
| unauthorized signature or alteration, customer's duty | 4-406 | 976 |
| variation by agreement, measure of damages, ordinary care | 4-103 | 957 |
| warranties of customer and collecting bank to payor, time for claims | 4-207 | 964 |
| Bulk transfers | | |
| application of proceeds | 6-106 | 991 |
| auction sales, auctioneer | 6-108 | 993 |
| creditors, credit for sums paid | 6-109 | 994 |
| limitation of actions and levies | 6-111 | 994 |
| notice to creditors | 6-105 | 991 |
| notice to creditors, requirements | 6-107 | 992 |
| schedule of property, list of creditors | 6-104 | 990 |
| subsequent transfers | 6-110 | 994 |
| transfers excepted from Article | 6-103 | 989 |
| transfers subject to Article | 6-102 | 989 |
| Commercial paper | | |
| acceptance, definition and operation | 3-410 | 938 |




HeinOnline -- 1963 vol. II 28 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| acceptance varying draft | 3-412 | 939 |
| accrual of cause of action | 3-122 | 928 |
| alteration of instrument, subsequent holder in due course | 3-407 | 937 |
| alteration or unauthorized signature by negligence | 3-406 | 937 |
| ambiguous terms and rules of construction | 3-118 | 927 |
| burden of establishing signatures, defenses and due course | 3-307 | 935 |
| cancellation and renunciation | 3-605 | 953 |
| certification of a check | 3-411 | 939 |
| consideration, want or failure as defense | 3-408 | 938 |
| contract of accommodation party | 3-415 | 940 |
| contract of guarantor | 3-416 | 941 |
| contract of indorser, order of liability | 3-414 | 940 |
| contract of maker, drawer and acceptor | 3-413 | 939 |
| conversion of instrument, innocent representative | 3-419 | 943 |
| date, antedating, postdating | 3-114 | 926 |
| definitions and index to definitions | 3-102 | 919 |
| discharge, effect against holder in due course | 3-602 | 952 |
| discharge of parties | 3-601 | 951 |
| dishonor, evidence and notice of | 3-510 | 950 |
| draft not an assignment | 3-409 | 938 |
| drafts in a set | 3-801 | 955 |
| effect of instrument on obligation for which given | 3-802 | 955 |
| holder in due course | 3-302 | 932 |
| holder in due course, rights of | 3-305 | 934 |
| holder not in due course, rights of | 3-306 | 935 |
| holder, rights of | 3-301 | 932 |
| impairment of recourse or of collateral | 3-606 | 953 |
| imposters, signature in name of payee | 3-405 | 937 |
| incomplete instruments | 3-115 | 926 |
| indorsements, special, blank | 3-204 | 930 |
| instruments not payable to order or to bearer | 3-805 | 956 |
| instruments payable at bank | 3-121 | 928 |
| instruments payable through bank | 3-120 | 928 |
| instruments payable to two or more persons | 3-116 | 926 |
| instruments payable with words of description | 3-117 | 926 |
| letter of advice of international sight draft | 3-701 | 954 |
| limitation of scope of Article | 3-103 | 921 |
| lost, destroyed or stolen instruments | 3-804 | 956 |
| money, instrument payable in, foreign currency | 3-107 | 923 |
| negotiable instruments, forms of | 3-104 | 921 |
| negotiation effective though subject to rescission | 3-207 | 931 |
| negotiation of instrument defined | 3-202 | 929 |
| notice of dishonor | 3-508 | 948 |
| notice to purchaser | 3-304 | 933 |
| other writing affecting instrument | 3-119 | 927 |
| payable at definite time | 3-109 | 923 |
| payable on demand | 3-108 | 923 |
| payable to bearer | 3-111 | 925 |
| payable to order | 3-110 | 924 |
| payment or acceptance, finality of | 3-418 | 943 |
| payment or satisfaction | 3-603 | 952 |
| presentment, dishonor, holder's right of recourse, re-presentment | 3-507 | 948 |
| presentment, how made | 3-504 | 946 |
| presentment, notice of dishonor, and protest, when necessary or permissible | 3-501 | 944 |
| presentment, right of party to whom made | 3-505 | 947 |
| presentment, time allowed for acceptance or payment | 3-506 | 947 |
| presentment, time of | 3-503 | 945 |
| presentment, unexcused delay, discharge | 3-502 | 945 |




HeinOnline -- 1963 vol. II 29 1963

| | Sec. | Page |
|---|---|---|
| presentment, waived or excused, protest, notice of dishonor or delay | 3-511 | 950 |
| promise or order, when unconditional | 3-105 | 922 |
| protest, noting for protest | 3-509 | 949 |
| reacquisition of instrument | 3-208 | 932 |
| restrictive indorsements | 3-205 | 930 |
| restrictive indorsements, effect of | 3-206 | 930 |
| seal, effect of | 3-113 | 926 |
| signature by authorized representative | 3-403 | 936 |
| signature, how made, liability | 3-401 | 936 |
| signature in ambiguous capacity | 3-402 | 936 |
| taking for value | 3-303 | 932 |
| tender of payment | 3-604 | 953 |
| terms and omissions not affecting negotiability | 3-112 | 925 |
| third party, notice of litigation to | 3-803 | 956 |
| transfer, right to indorsement | 3-201 | 929 |
| unauthorized signatures | 3-404 | 936 |
| warranties on presentment and transfer | 3-417 | 941 |
| wrong or misspelled name | 3-203 | 929 |
| Effective date | 10-101 | 1078 |
| General provisions | | |
| acceleration, option at will | 1-208 | 866 |
| construction against implicit repeal | 1-104 | 856 |
| course of dealing and usage of trade | 1-205 | 864 |
| general definitions | 1-201 | 858 |
| general law supplementary | 1-103 | 856 |
| good faith obligation imposed | 1-203 | 864 |
| purposes, construction, variation by agreement | 1-102 | 855 |
| remedies liberally administered | 1-106 | 857 |
| reservation of rights, performance or acceptance | 1-207 | 865 |
| Statute of Frauds, exceptions | 1-206 | 865 |
| territorial application, parties' power to elect | 1-105 | 857 |
| third party documents, prima facie evidence | 1-202 | 864 |
| time, reasonable time, seasonably | 1-204 | 864 |
| waiver of claim or right after breach | 1-107 | 857 |
| Investment securities | | |
| action against purchaser based on wrongful transfer | 8-315 | 1031 |
| adverse claims, issuer's limited duty of inquiry | 8-403 | 1036 |
| applicability of laws | 8-106 | 1019 |
| attachment or levy upon security | 8-317 | 1031 |
| authenticating trustee, transfer agent or registrar, duty of | 8-406 | 1038 |
| bona fide purchaser | 8-302 | 1024 |
| brokers | 8-303 | 1024 |
| completion or alteration of instrument | 8-206 | 1023 |
| definitions and index of definitions | 8-102 | 1017 |
| delivery to purchaser, when, broker as holder | 8-313 | 1029 |
| delivery without indorsement, right to compel indorsement | 8-307 | 1026 |
| duty to deliver, when completed | 8-314 | 1030 |
| good faith delivery, no conversion | 8-318 | 1032 |
| guaranteeing signature or indorsement, effect of | 8-312 | 1029 |
| indorsements, assurance of effectiveness | 8-402 | 1034 |
| indorsements, how made, special | 8-308 | 1027 |
| indorsements, in bearer form | 8-310 | 1028 |
| indorsements, without delivery, effect of | 8-309 | 1028 |
| issuer, guarantor | 8-201 | 1020 |
| issuer's lien | 8-103 | 1018 |
| issuer's responsibility and defenses, notice of defect or defense | 8-202 | 1021 |
| issuer's restrictions on transfer, effect | 8-204 | 1022 |
| lost, destroyed or stolen, notice to issuer, substitution | 8-405 | 1038 |
| notice to purchaser of adverse claims | 8-304 | 1025 |




HeinOnline -- 1963 vol. II 30 1963

| | Sec. | Page |
|---|---|---|
| overissue, effect of | 8-104 | 1018 |
| purchase, rights acquired | 8-301 | 1024 |
| purchaser's right to proof of transferor's authority | 8-316 | 1031 |
| registered owners, rights of issuer | 8-207 | 1023 |
| registration, liability and non-liability for | 8-404 | 1037 |
| registration of transfer, duty of issuer | 8-401 | 1034 |
| securities negotiable, presumptions | 8-105 | 1019 |
| signature of authenticating trustee, registrar or transfer agent, effect of | 8-208 | 1023 |
| staleness as notice of adverse claims | 8-305 | 1025 |
| staleness as notice of defects or defenses | 8-203 | 1022 |
| Statute of Frauds | 8-319 | 1032 |
| transfer or pledge within a central depository system | 8-320 | 1032 |
| unauthorized indorsement, effect of | 8-311 | 1028 |
| unauthorized signature on issue, effect of | 8-205 | 1022 |
| warranties on presentment and transfer | 8-306 | 1025 |
| Laws not repealed | 10-104 | 1079 |
| Laws repealed, transition provisions | 10-102 | 1078 |
| Letters of credit | | |
| advising bank, confirmation, error in statement of terms | 5-107 | 982 |
| availability of credit in portions, reservation of lien or claim | 5-110 | 984 |
| consideration, not necessary | 5-105 | 981 |
| definitions | 5-103 | 979 |
| establishment of credit, time and effect of | 5-106 | 981 |
| formal requirements, signing | 5-104 | 981 |
| improper dishonor or anticipatory repudiation, remedy | 5-115 | 986 |
| indemnities | 5-113 | 985 |
| insolvency, bank holding funds or documentary credit | 5-117 | 988 |
| issuer's duty and privilege to honor, right to reimbursement | 5-114 | 985 |
| issuer's obligation to its customer | 5-109 | 983 |
| "notation credit," exhaustion of credit | 5-108 | 982 |
| "presenter" defined | 5-112 | 984 |
| scope of Article | 5-102 | 979 |
| time allowed for honor or rejection, withholding of | 5-112 | 984 |
| transfer and assignment | 5-116 | 987 |
| warranties on transfer and presentment | 5-111 | 984 |
| Sales | | |
| absence of specified time provisions, notice of termination | 2-309 | 877 |
| absence of specified place of delivery | 2-308 | 877 |
| acceptance, effect of notice of breach, claim | 2-607 | 902 |
| acceptance, revocation in whole or in part | 2-608 | 903 |
| acceptance of goods, what constitutes | 2-606 | 901 |
| action for the price | 2-709 | 912 |
| additional terms in acceptance or confirmation | 2-207 | 872 |
| allocation or division of risks | 2-303 | 875 |
| antecedent breach, effect of cancellation or rescission on claims | 2-720 | 917 |
| anticipatory repudiation | 2-610 | 904 |
| anticipatory repudiation, retraction of | 2-611 | 904 |
| authority to ship under reservation, inspection by buyer | 2-310 | 877 |
| breach, effect on risk of loss | 2-510 | 897 |
| buyer's damages for breach where goods accepted | 2-714 | 914 |
| buyer's damages for non-delivery or repudiation | 2-713 | 914 |
| buyer's incidental and consequential damages | 2-715 | 914 |
| buyer's insurable interest in goods, manner of identification | 2-501 | 892 |
| buyer's remedies in general, security interest in rejected goods | 2-711 | 913 |
| buyer's right to goods on seller's insolvency | 2-502 | 893 |
| buyer's right to inspection of goods | 2-513 | 898 |
| buyer's right to specific performance or recovery of goods | 2-716 | 915 |
| buyer's rights on improper delivery | 2-601 | 899 |
| casualty to identified goods | 2-613 | 905 |




HeinOnline -- 1963 vol. II 31 1963

# INDEX


| | Sec. | Page |
|---|---|---|
| C. I. F. and C. & F. terms | 2-320 | 883 |
| contractual modification or limitation of remedy | 2-719 | 916 |
| course of performance or practical construction of contract | 2-208 | 873 |
| "cover," buyer's procurement of substitute goods | 2-712 | 913 |
| cumulation and conflict of warranties, express or implied | 2-317 | 881 |
| cure by seller of improper tender or delivery, replacement | 2-508 | 896 |
| deduction of damages from price | 2-717 | 915 |
| definitions and index of definitions | 2-103-106 | 866-869 |
| delegation of performance, assignment of rights | 2-210 | 874 |
| delivery "ex-ship" | 2-322 | 885 |
| delivery in single lot or several lots | 2-307 | 877 |
| documents deliverable on acceptance, on payment | 2-514 | 899 |
| exclusion or modification of warranties | 2-316 | 880 |
| excuse, procedure on notice claiming | 2-616 | 907 |
| excuse by failure of presupposed conditions | 2-615 | 906 |
| express warranties by affirmation, promise, description, sample | 2-313 | 879 |
| failure of specification or cooperation, effect of | 2-311 | 878 |
| final written expressions, parol or extrinsic evidence | 2-202 | 871 |
| financing agency, rights of | 2-506 | 895 |
| firm offers, revocability | 2-205 | 872 |
| F. O. B. and F. A. S. terms | 2-319 | 882 |
| formal requirements of contract, Statute of Frauds | 2-201 | 870 |
| formation of contracts for sale, in general | 2-204 | 871 |
| general obligations of parties | 2-301 | 875 |
| goods in dispute, right to preserve evidence, third party inspection | 2-515 | 899 |
| goods to be severed from realty, recording | 2-107 | 869 |
| implied warranty, fitness for particular purpose | 2-315 | 880 |
| implied warranty, merchantability, usage of trade | 2-314 | 880 |
| installment contract, breach | 2-612 | 905 |
| letter of credit, confirmed credit, terms | 2-325 | 886 |
| liquidation or limitation of damages, deposits | 2-718 | 915 |
| market quotations, admissibility | 2-724 | 918 |
| measure of quantity by output or requirements, exclusive dealings | 2-306 | 876 |
| modification, rescission and waiver of agreements | 2-209 | 874 |
| net landed, delivered weights, condition on arrival | 2-321 | 884 |
| "no arrival, no sale" term | 2-324 | 886 |
| offer and acceptance, lapse | 2-206 | 872 |
| open price term | 2-305 | 876 |
| open time for payment or running of credit | 2-310 | 877 |
| options and cooperation respecting performance | 2-311 | 878 |
| overseas shipments, bills of lading | 2-323 | 885 |
| passing of title, reservations | 2-401 | 889 |
| payment by buyer before inspection | 2-512 | 898 |
| performance, right to adequate assurance of | 2-609 | 904 |
| person in the position of a seller | 2-707 | 911 |
| price payable in money, goods, realty or otherwise | 2-304 | 875 |
| proof of market price, time and place | 2-723 | 918 |
| remedies for breach of collateral contracts not impaired | 2-701 | 907 |
| remedies for fraud | 2-721 | 917 |
| rightful rejection, manner and effect | 2-602 | 900 |
| rightfully rejected goods, buyer's options as to salvage | 2-604 | 901 |
| rightfully rejected goods, merchant buyer's duties | 2-603 | 900 |
| risk of loss in absence of breach | 2-509 | 896 |
| sale by auction | 2-328 | 888 |
| sale on approval, or return, special incidents | 2-327 | 888 |
| sale on approval, or return, consignment, and rights of creditors | 2-326 | 887 |
| scope, exclusions | 2-102 | 866 |
| seals inoperative | 2-203 | 871 |
| seller's creditors' rights against sold goods | 2-402 | 890 |
| seller's damages for non-acceptance or repudiation | 2-708 | 911 |




HeinOnline -- 1963 vol. II 32 1963

| | Sec. | Page |
|---|---|---|
| seller's incidental damages | 2-710 | 912 |
| seller's remedies in general | 2-703 | 908 |
| seller's remedies on discovery of buyer's insolvency | 2-702 | 907 |
| seller's resale including contract for resale | 2-706 | 910 |
| seller's right to identify goods | 2-704 | 908 |
| seller's shipment, duties | 2-504 | 894 |
| seller's shipment under reservation | 2-505 | 895 |
| seller's stoppage of delivery in transit or otherwise | 2-705 | 909 |
| seller's tender, effect of, delivery on condition | 2-507 | 896 |
| seller's tender of delivery, manner of | 2-503 | 893 |
| statute of limitations in contracts | 2-725 | 918 |
| substituted performance | 2-614 | 906 |
| tender of payment by buyer, payment by check | 2-511 | 897 |
| third parties, who can sue for injury to goods | 2-722 | 917 |
| third party beneficiaries of warranties express or implied | 2-318 | 882 |
| title acquired by buyer, extent of, good faith purchaser, "entrusting" | 2-403 | 891 |
| unconscionable contract or clause | 2-302 | 875 |
| waiver of buyer's objections by failure to particularize | 2-605 | 901 |
| warranty of title and against infringement, effect of buyer's specifications | 2-312 | 878 |
| Secured transactions; sales of accounts, contract rights and chattel paper | | |
| accessions, priorities | 9-314 | 1062 |
| account, contract right, general intangibles | 9-106 | 1044 |
| after-acquired collateral, when not security | 9-108 | 1045 |
| agreement not to assert defenses against assignee | 9-206 | 1049 |
| alienability of debtor's rights, judicial process | 9-311 | 1059 |
| assignment, defenses, rights | 9-318 | 1064 |
| assignment of interest, duties of filing officer, fees | 9-405 | 1070 |
| bulk transfer laws, applicability | 9-111 | 1046 |
| chattel paper and non-negotiable instruments, purchase of | 9-308 | 1058 |
| classification of goods | 9-109 | 1045 |
| collateral in secured party's possession, rights and duties | 9-207 | 1049 |
| collateral, title to immaterial | 9-202 | 1047 |
| collateral, use or disposition without accounting | 9-205 | 1049 |
| collateral, where not owned by debtor | 9-112 | 1046 |
| collection rights of secured party | 9-502 | 1073 |
| commingled or processed goods, priorities | 9-315 | 1063 |
| compulsory disposition of collateral, acceptance or discharge | 9-505 | 1076 |
| definitions and index of definitions | 9-105 | 1042 |
| debtor's right to redeem collateral | 9-506 | 1077 |
| default, where agreement covers both real and personal property | 9-501 | 1072 |
| enforceability of interest, proceeds, formal requisites | 9-203 | 1047 |
| filing, place of, erroneous, removal of collateral | 9-401 | 1065 |
| filing required to perfect security interests, exceptions | 9-302 | 1052 |
| filing, what constitutes, duration, lapses, duty of filing officer | 9-403 | 1067 |
| financing statement, formal requisites, amendment | 9-402 | 1066 |
| information from filing officer | 9-407 | 1071 |
| perfection by possession without filing | 9-305 | 1055 |
| perfection of security interests | 9-304 | 1054 |
| policy and scope of Article | 9-102 | 1039 |
| priorities, conflicting interests in same collateral | 9-312 | 1059 |
| priority of certain liens arising by operation of law | 9-310 | 1058 |
| priority of security interests in fixtures | 9-313 | 1061 |
| priority subject to subordination | 9-316 | 1064 |
| priority under unperfected interests, lien creditor | 9-301 | 1051 |
| proceeds, secured party's rights on disposition of collateral | 9-306 | 1055 |
| protection of buyers of goods | 9-307 | 1057 |
| protection of purchaser of instruments and documents | 9-309 | 1058 |




HeinOnline -- 1963 vol. II 33 1963

| | Sec. | Page |
|---|---|---|
| purchase money security interest | 9-107 | 1044 |
| release of collateral, duties of filing officer, fees | 9-406 | 1071 |
| secured party's liability for failure to comply | 9-507 | 1077 |
| secured party's nonliability | 9-317 | 1064 |
| secured party's right to dispose of collateral after default, effect of | 9-504 | 1074 |
| secured party's right to take possession after default | 9-503 | 1074 |
| security agreements, general validity | 9-201 | 1047 |
| security interest, when attached, after-acquired property, future advances | 9-204 | 1048 |
| security interest, when perfected, continuity | 9-303 | 1053 |
| security interests arising under Article on Sales | 9-113 | 1046 |
| security interests governed by Article | 9-103 | 1040 |
| statement of account or list of collateral, requests for | 9-208 | 1050 |
| sufficiency of description | 9-110 | 1046 |
| termination statement | 9-404 | 1069 |
| transactions excluded from Article | 9-104 | 1041 |
| Warehouse receipts, bills of lading and other documents of title | | |
| altered bills of lading | 7-306 | 1007 |
| altered warehouse receipts | 7-208 | 1000 |
| attachment of goods covered by negotiable instrument | 7-602 | 1016 |
| bills of lading in a set | 7-304 | 1006 |
| carrier's duty of care, contractual limitation of liability | 7-309 | 1009 |
| carrier's lien | 7-307 | 1007 |
| carrier's lien, enforcement of | 7-308 | 1008 |
| compliance with commercial contract, when adequate | 7-509 | 1015 |
| conflicting claims, interpleader | 7-603 | 1017 |
| construction against negative implication | 7-105 | 996 |
| destination bills | 7-305 | 1007 |
| definitions and index of definitions | 7-102 | 995 |
| delivery without indorsement, right to require indorsement | 7-506 | 1015 |
| diversion, reconsignment, change of instructions | 7-303 | 1006 |
| document of title to goods, defeated in certain cases | 7-503 | 1013 |
| duplicate receipt or bill, overissue | 7-402 | 1010 |
| duty of care, contractual limitations of warehouseman's liability | 7-204 | 998 |
| form of, essential and optional terms | 7-202 | 997 |
| good faith delivery, no liability | 7-404 | 1011 |
| goods kept separate, fungible goods | 7-207 | 1000 |
| indorser not a guarantor for other parties | 7-505 | 1015 |
| liability for non-receipt or misdescription | 7-203 | 998 |
| lien of warehouseman | 7-209 | 1001 |
| lien of warehouseman, enforcement of | 7-210 | 1002 |
| lost and missing documents | 7-601 | 1016 |
| negotiable and non-negotiable documents | 7-104 | 996 |
| negotiation form, requirements of due negotiation | 7-501 | 1012 |
| obligation of warehouseman or carrier to deliver, excuse | 7-403 | 1010 |
| obligations of issuer, irregularities | 7-401 | 1010 |
| relation of Article to applicable law | 7-103 | 996 |
| rights acquired by due negotiation | 7-502 | 1012 |
| rights in absence of due negotiation, diversion, seller's stoppage of delivery | 7-504 | 1014 |
| special provisions, bills of lading | 7-301 | 1004 |
| termination of storage at warehouseman's option | 7-206 | 999 |
| through bills and similar documents | 7-302 | 1005 |
| title defeated in certain cases | 7-205 | 999 |
| warehouse receipts, who may issue, storage under government bond | 7-201 | 997 |
| warranties of collecting bank as to documents | 7-508 | 1015 |
| warranties on negotiation or transfer | 7-507 | 1015 |
| **UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT** | Ch. 244 | 758 |
| Claim for abandoned property paid or delivered | 19 | 769 |




HeinOnline -- 1963 vol. II 34 1963

| | Sec. | Page |
|---|---|---|
| Definitions and use of terms | 1 | 758 |
| Deposit of funds | 18 | 768 |
| Deposits and refunds held by utilities | 4 | 761 |
| Determination of claims | 20 | 769 |
| Effect of laws of other states | 27 | 770 |
| Election to take payment or delivery | 22 | 769 |
| Examinations of records by state treasurer | 23 | 770 |
| Income accruing after payment or delivery | 15 | 767 |
| Judicial action upon determinations | 21 | 769 |
| Miscellaneous personal property held for another person | 9 | 763 |
| Notice and publications of lists of abandoned property | 12 | 765 |
| Payment or delivery of abandoned property | 13 | 766 |
| Penalties for violations | 25 | 770 |
| Periods of limitation not a bar | 16 | 767 |
| Proceeding to compel delivery of abandoned property | 24 | 770 |
| Property held by banking or financial organizations | 2 | 759 |
| Property held by fiduciaries | 7 | 762 |
| Property held by state courts and public officers and agencies | 8 | 763 |
| Property of associations and financial organizations held in course of dissolution | 6 | 762 |
| Reciprocity with other states | 10 | 763 |
| Relief from liability by payment or delivery | 14 | 767 |
| Reports of abandoned property | 11 | 764 |
| Rules and regulations, state treasurer, special assistant attorney general | 26 | 770 |
| Sale of abandoned property | 17 | 768 |
| Unclaimed funds held by life insurance corporations | 3 | 761 |
| Undistributed dividends and distribution of business associations | 5 | 762 |

**UNIVERSITY SYSTEM**

| | | |
|---|---|---|
| Construction of buildings authorized | 16 | 1203 |
| Revenue-producing facilities at units, authority of regents | 252 | 818 |
| See Department of Public Institutions | | |


# V


**VALIDATING ACTS**

| | | |
|---|---|---|
| Bond validating Act of 1963 | Ch. 100 | 195 |
| Instruments of conveyance of real property | Ch. 63 | 116 |

**VETERANS**

| | | |
|---|---|---|
| Expense of headstones for deceased veterans increased | Ch. 146 | 284 |
| Korean war honorarium, date for filing extended | Ch. 192 | 581 |
| Unclaimed moneys of deceased inmates of soldiers' home, disposition | 232 | 443 |
| World War I veterans, honorarium for | Ch. 270 | 1191 |
| See Department of Public Institutions | | |

**VETERANS AND PIONEERS MEMORIAL BUILDING**

| | | |
|---|---|---|
| Purpose and use of | 27 | 1208 |

**VETERANS MEMORIAL COMMISSION**

See Treasury Fund Structure Act

**VETERANS MEMORIAL FUND**

| | | |
|---|---|---|
| Authorized use of | 28 | 1208 |

**VETERINARIANS**

See Treasury Fund Structure Act




HeinOnline -- 1963 vol. II 35 1963

| | Sec. | Page |
|---|---|---|
| **VOCATIONAL SCHOOL FOR GIRLS** | | |
| See Department of Public Institutions | | |
| **VOCATIONAL REHABILITATION** | | |
| Payments into account | 2 | 676 |
| Reference of injured workmen by industrial accident board | 1 | 676 |
| **W** | | |
| **WAREHOUSES AND WAREHOUSEMEN** | | |
| Corporate surety bond required | Ch. 27 | 37 |
| Penalties under Uniform Commercial Code | 11-154 | 1113 |
| | 11-155 | 1114 |
| **WATERS AND IRRIGATION** | | |
| Appointment of water commissioner to distribute decree water rights | Ch. 231 | 702 |
| Columbia Interstate Compact, amended | Ch. 196 | 589 |
| Conservation board, appropriation of waters, commencement of construction | Ch. 214 | 645 |
| Conservation board bonds negotiable under Uniform Commercial Code | 11-156 | 1114 |
| See Treasury Fund Structure Act | | |
| **WATER POLLUTION** | | |
| Maps and plats, sanitary restrictions | 3 | 497 |
| Policy of state | 1 | 496 |
| Subdivision defined | 2 | 496 |
| **WATER WELL CONTRACTORS** | | |
| Powers and duties of board, fee for printed rules | 3 | 716 |
| Purpose of Act, definitions, exemptions | 2 | 715 |
| Successor in interest, permission to complete contract | 1 | 714 |
| Temporary licenses prior to examination | 4 | 717 |
| See Treasury Fund Structure Act | | |
| **WILLS** | | |
| Filing of contests on probate, motions in opposition | Ch. 8 | 7 |
| Time for contesting after probate reduced | Ch. 19 | 24 |
| **WITNESSES** | | |
| Fees increased | Ch. 117 | 226 |
| **WORKMEN'S COMPENSATION** | | |
| Employee and workman defined, recipient of general relief | Ch. 153 | 461 |
| Recipients of relief working for counties, coverage | Ch. 180 | 540 |
| Right to be bound, election eliminated | Ch. 95 | 189 |
| See Industrial Accident Board under Treasury Fund Structure Act | | |
| **Z** | | |
| **ZONING** | | |
| Suburban areas, provisions for | Ch. 246 | 774 |




HeinOnline -- 1963 vol. II 36 1963

# INDEX OF APPROPRIATIONS

HeinOnline -- 1963 vol. II 37 1963

HeinOnline -- 1963 vol. II 38 1963

# INDEX OF APPROPRIATIONS

## EXECUTIVE DEPARTMENTS


Page

**ABSTRACTERS BOARD OF EXAMINERS** ..... 1228

**ADJUTANT GENERAL** ..... 1253

**AERONAUTICS COMMISSION** ..... 1241

**AGRICULTURE, DEPARTMENT OF** ..... 1233

**APPRENTICESHIP COUNCIL,** Deficiency ..... 1218

**ARCHITECTURAL BOARD OF EXAMINERS** ..... 1228

**ATHLETIC COMMISSION** ..... 1228

**ATTORNEY GENERAL** ..... 1221

**AUDITOR, STATE** ..... 1222

**BARBER EXAMINERS BOARD** ..... 1228

**BOARD OF EQUALIZATION** ..... 1274

Refunds ..... 1214

**BOARD OF EXAMINERS** ..... 1272

Commission for Uniform State Laws ..... 1250

Extradition and transportation of prisoners ..... 1249

Insurance premiums ..... 1249, 1250

State Capitol repair ..... 1251

**BOARD OF HEALTH** ..... 1256

**BUDGET DIRECTOR** ..... 1242

**CHIROPRACTIC EXAMINERS BOARD** ..... 1228

**COSMETOLOGY EXAMINING BOARD** ..... 1228

**DENTAL EXAMINERS BOARD** ..... 1229

**DEPARTMENT OF ADMINISTRATION** ..... 1255

**DEPARTMENT OF INSTITUTIONS** ..... 1276

**ENGINEER, STATE** ..... 1234

**ENTOMOLOGIST, STATE** ..... 1234

**EXAMINER, STATE** ..... 1272

Unclaimed dividends on closed banking corporation ..... 1216

**FISH AND GAME** ..... 1262

**FOOD DISTRIBUTORS BOARD** ..... 1229

**FORESTER, STATE** ..... 1257

Clarke-McNary funds ..... 1219

**GOVERNOR'S OFFICE** ..... 1221

**GRASS CONSERVATION COMMISSION** ..... 1235

**HAIL INSURANCE, BOARD OF** ..... 1235

**HIGHWAY COMMISSION** ..... 1260

State parks, additional ..... 1216

**HIGHWAY PATROL** ..... 1235

**HISTORICAL SOCIETY** ..... 1254




HeinOnline -- 1963 vol. II 39 1963

# INDEX


Page

INDIAN AFFAIRS, CO-ORDINATOR ..... 1236

INDUSTRIAL ACCIDENT BOARD ..... 1236

JOINT MERIT SYSTEM ..... 1273

LABOR AND INDUSTRY, DEPARTMENT OF ..... 1257

LANDS AND INVESTMENTS, COMMISSIONER ..... 1236

LIBRARY COMMISSION, STATE ..... 1240

LIQUOR CONTROL BOARD ..... 1274

LIVESTOCK COMMISSION ..... 1237

Deficiency ..... 1219

LIVESTOCK SANITARY BOARD ..... 1237

MEDICAL EXAMINERS BOARD ..... 1229

MILK CONTROL BOARD ..... 1238

MORTICIANS STATE BOARD ..... 1229

NURSING, BOARD ..... 1229

OIL AND GAS CONSERVATION COMMISSION ..... 1238

OPTOMETRY BOARD OF EXAMINERS ..... 1229

OSTEOPATHIC BOARD OF EXAMINERS ..... 1230

PBX DIVISION ..... 1253

PARDONS, BOARD OF ..... 1254

PHARMACY BOARD ..... 1230

PLANNING BOARD ..... 1240

PLUMBING BOARD OF EXAMINERS ..... 1230

PROFESSIONAL ENGINEERS AND LAND SURVEYORS BOARD ..... 1230

PUBLIC EMPLOYEES RETIREMENT SYSTEM ..... 1273

PUBLIC SCHOOL STATE EQUALIZATION AID ..... 1251

PUBLIC SCHOOL TRANSPORTATION AID ..... 1251

PUBLIC WELFARE DEPARTMENT ..... 1256

RAILROAD AND PUBLIC SERVICE COMMISSION ..... 1221

REGISTRAR OF MOTOR VEHICLES ..... 1255

SANITARIANS REGISTRATION COUNCIL ..... 1231

SECRETARY OF STATE ..... 1222

Deficiency ..... 1218

SOIL CONSERVATION COMMITTEE ..... 1239

STATE PARKS ..... 1261

SUPERINTENDENT OF PUBLIC INSTRUCTION ..... 1223

TEACHERS RETIREMENT SYSTEM ..... 1275

TERRITORIAL CENTENNIAL COMMISSION ..... 839

TREASURER, STATE ..... 1223

UNEMPLOYMENT COMPENSATION COMMISSION ..... 1273

VETERANS WELFARE COMMISSION ..... 1253




HeinOnline -- 1963 vol. II 40 1963

Page

VETERINARY MEDICAL EXAMINERS BOARD ..... 1230

VOCATIONAL REHABILITATION ..... 1239

WATER CONSERVATION BOARD ..... 1240

WATER WELL CONTRACTORS EXAMINING BOARD ..... 1231

## JUDICIAL DEPARTMENTS

COUNTY ATTORNEYS ..... 1256

DISTRICT JUDGES ..... 1256

LAW LIBRARY ..... 1253

SUPREME COURT ..... 1223

## LEGISLATIVE DEPARTMENT

LEGISLATIVE COUNCIL ..... 1214

THIRTY-EIGHTH LEGISLATIVE ASSEMBLY

Mileage and per diem ..... 1213

Incidental expense ..... 1213

Supplemental ..... 1250

## STATE INSTITUTIONS

AGRILULTURAL EXPERIMENT STATION ..... 1245

BOARD OF EDUCATION ..... 1248

CO-OPERATIVE AGRICULTURAL EXTENSION SERVICE ..... 1245

CENTER FOR THE AGED ..... 1266

CHILDREN'S CENTER ..... 1264

DEAF AND BLIND SCHOOL ..... 1266

INDUSTRIAL SCHOOL ..... 1269

Deficiency ..... 1219

PRISON, STATE ..... 1268

STATE HOSPITAL ..... 1265

TRAINING SCHOOL AND HOSPITAL ..... 1269

Food service and dormitory building ..... 1258

Deficiency ..... 1219

TUBERCULOSIS SANITARIUM ..... 1267

UNIVERSITY SYSTEM

Eastern Montana College of Education ..... 1247

Executive Secretary, Office ..... 1248

Northern Montana College ..... 1246

School of Mines ..... 1244

State College ..... 1245

State University ..... 1244

Western Interstate Commission for Higher Education ..... 1247

Western Montana College ..... 1247



HeinOnline -- 1963 vol. II 41 1963

Page

**VETERANS' HOME** ..... 1267

**VOCATIONAL SCHOOL FOR GIRLS** ..... 1269

## MISCELLANEOUS APPROPRIATIONS

**FEDERAL AND PRIVATE REVENUE FUND** ..... 1275

**REVISED CODES OF MONTANA**

Cumulative pocket supplements ..... 1217, 1249

Replacement Volumes ..... 1216, 1217, 1249

**TAX REFUNDS** ..... 1214

**UNCLAIMED DIVIDENDS ON CLOSED BANKING CORPORATION** ..... 1216



HeinOnline -- 1963 vol. II 42 1963

# CODE INDEX

HeinOnline -- 1963 vol. II 43 1963

HeinOnline -- 1963 vol. II 44 1963

# CODE INDEX

## CODES OF 1947


| Title-Sec. | | Page |
|---|---|---|
| 1-501 | Amended | 432 |
| 1-603 | Amended | 201 |
| 3-103 | Amended | 687 |
| 3-203 | Repealed | 447 |
| 3-226 | Amended | 1079 |
| 3-228 | Amended | 38 |
| 3-233 | Amended | 302 |
| 3-408 | Amended | 302 |
| 3-420 | Amended | 302 |
| 3-510 | Amended | 303 |
| 3-602 | Amended | 303 |
| 3-704 | Amended | 304 |
| 3-904 | Amended | 304 |
| 3-1103 | Amended | 40 |
| 3-1212 | Amended | 229 |
| 3-1404 | Amended | 41 |
| 3-1709 | Amended | 304 |
| 3-1714 | Amended | 72 |
| 3-1715 | Amended | 75, 304 |
| 3-1716 | Amended | 77 |
| 3-1717 | Amended | 305 |
| 3-1719 | Repealed | 78 |
| 3-1723, 1724 | Amended | 78 |
| 3-1906 | Amended | 306 |
| 3-1910 | Amended | 307 |
| 3-2001-2004 | Repealed | 256 |
| 3-2004 | Amended | 307 |
| 3-2005-2007 | Repealed | 256 |
| 3-2007 | Amended | 308 |
| 3-2008-2011 | Repealed | 256 |
| 3-2207 | Amended | 308 |
| 3-2302 | Amended | 308 |
| 3-2315 | Amended | 308 |
| 3-2476 | Amended | 25 |
| 3-2503 | Amended | 309 |
| 3-2703 | Repealed | 447 |
| 3-2704 | Amended | 347 |
| 3-2803 | Amended | 309 |
| 4-104 | Amended | 1177 |
| 4-105, 108 | Amended | 458 |
| 4-172 | Amended | 215 |
| 4-229 | Amended | 426 |
| 4-231 | Repealed | 447 |
| 4-332 | Amended | 719 |
| 4-341 | Amended | 231 |
| 4-403 | Amended | 668 |
| 5-206 | Amended | 80 |
| 5-605 | Repealed | 257 |
| 5-803 | Amended | 1080 |
| 5-910 | Amended | 433 |
| 5-1001 | Amended | 1081 |
| 5-1007, 1008 | Repealed | 1078 |
| 5-1016, 1017 | Repealed | 1078 |
| 5-1028 | Amended | 53 |
| 5-1043 | Repealed | 1078 |
| 5-1047, 1048 | Repealed | 1078 |
| 5-1049 | Repealed | 1078 |
| 5-1114 | Amended | 1081 |
| 8-101 | Amended | 608 |
| 8-103 | Amended | 612 |
| 8-119 | Amended | 610 |
| 8-121 | Amended | 611 |
| 8-201 | Amended | 504 |
| 8-202 | Amended | 505 |
| 8-204 | Amended | 506 |
| 8-205, 206 | Amended | 507 |
| 8-207 | Amended | 508 |
| 8-210 | Amended | 509 |
| 8-501-507 | Repealed | 1078 |
| 8-709 | Amended | 1083 |
| 8-816-818 | Repealed | 1078 |
| 9-604 | Amended | 64 |
| 10-101 | Amended | 1150 |
| 10-103, 104 | Repealed | 1154 |
| 10-105 | Amended | 1150 |
| 10-106-109 | Repealed | 1154 |
| 10-110 | Amended | 1150 |
| 10-111 | Amended | 256 |
| 10-112-114 | Amended | 1151 |
| 10-115-117 | Repealed | 1154 |
| 10-118 | Amended | 1152 |
| 10-119 | Amended | 644 |
| 10-120, 121 | Amended | 1152 |
| 10-602 | Amended | 32 |
| 10-622 | Amended | 223 |
| 11-725 | Amended | 279 |
| 11-728 | Amended | 280 |
| 11-966 | Amended | 478 |
| 11-1202 | Amended | 36 |
| 11-1310 | Amended | 9 |
| 11-1914 | Amended | 8 |
| 11-1919 | Amended | 101 |
| 11-1920 | Amended | 324 |
| 11-1921 | Amended | 325 |
| 11-1925 | Amended | 106 |
| 11-1926 | Amended | 107 |
| 11-1927 | Amended | 108 |
| 11-2008 | Amended | 88 |
| 11-2021 | Repealed | 447 |
| 11-2025, 2026 | Amended | 412 |
| 11-2028 | Amended | 413 |
| 11-2030 | Amended | 412 |
| 11-2218 | Amended | 93 |
| 11-2404 | Amended | 97, 1083 |
| 11-2414 | Added | 91 |
| 11-2710 | Repealed | 782 |
| 11-3714 | Amended | 1084 |
| 11-3721 | Amended | 1087 |




HeinOnline -- 1963 vol. II 45 1963

# INDEX


| Title-Sec. | | Page |
|---|---|---|
| 11-3801 | Amended | 782 |
| 11-3803 | Amended | 783 |
| 11-3808, 3810 | Amended | 784 |
| 11-3813, 3818 | Amended | 785 |
| 11-3820, 3824 | Amended | 785 |
| 11-3825 | Amended | 786 |
| 11-3828 | Amended | 787 |
| 11-3830, 3831 | Amended | 788 |
| 11-3832 | Repealed | 794 |
| 11-3833, 3834 | Amended | 790 |
| 11-3835-3839 | Repealed | 794 |
| 11-3840 | Amended | 791 |
| 11-3842, 3843 | Amended | 791 |
| 11-3844-3846 | Amended | 792 |
| 11-3847, 3848 | Amended | 793 |
| 11-3851 | Amended | 793 |
| 11-3852, 3854 | Repealed | 782 |
| 11-3854 | Repealed | 794 |
| 11-3855 | Amended | 793 |
| 11-3856-3858 | Repealed | 794 |
| 11-3910 (b) | Amended | 1087 |
| 13-606 | Amended | 1088 |
| 14-101-129 | Repealed | 738 |
| 14-523 | Repealed | 1078 |
| 15-103, 104 | Amended | 485 |
| 15-108 | Amended | 547 |
| 15-201, 204, 302 | Amended | 549 |
| 15-401 | Amended | 550 |
| 15-603, 605 | Repealed | 1078 |
| 15-628-651 | Repealed | 1078 |
| 15-1001 | Amended | 469 |
| 15-1101 | Amended | 749 |
| 15-1119 | Added | 113, 750 |
| 15-1120 | Added | 750 |
| 15-1121-1125 | Added | 751 |
| 15-1126-1128 | Added | 752 |
| 15-1129, 1130 | Added | 753 |
| 15-2011 | Amended | 153 |
| 15-2015 | Amended | 205 |
| 15-2024 | Amended | 325 |
| 16-912 | Amended | 222 |
| 16-1015 | Amended | 45 |
| 16-1803 | Amended | 34 |
| 16-1904 | Amended | 674 |
| 16-1907 | Amended | 582 |
| 16-2001 | Amended | 10 |
| 16-2008 | Amended | 272 |
| 16-2044 | Amended | 11 |
| 16-2050 | Amended | 13 |
| 16-2618 | Amended | 54 |
| 16-2905 | Amended | 1088 |
| 16-2921 | Repealed | 1078 |
| 16-2922, 2923 | Amended | 1092 |
| 16-4527 | Amended | 134 |
| 17-308-314 | Repealed | 1078 |
| 17-319 | Repealed | 600 |
| 17-601, 602 | Repealed | 1078 |
| 18-201-205 | Repealed | 1078 |
| 19-103 | Amended | 1092 |
| 19-119-121 | Repealed | 87 |
| 19-121 | Amended | 436 |
| 20-314 | Added | 1097 |
| 23-605 | Amended | 82 |
| 23-1301 | Amended | 214 |
| 23-1302 (1) | Amended | 234 |
| 23-1309 | Amended | 233 |
| 23-1312 | Amended | 214 |
| 23-1611 | Amended | 69, 110 |
| 23-1712 | Amended | 71 |
| 23-1807 | Amended | 71 |
| 25-231 | Amended | 1095 |
| 25-301 | Amended | 551 |
| 25-303 | Amended | 552 |
| 25-306 | Amended | 553 |
| 25-401 | Amended | 225 |
| 25-404 | Amended | 226 |
| 25-501 | Amended | 640 |
| 25-508 | Amended | 176 |
| 25-609 | Amended | 193 |
| 26-103 | Amended | 1206 |
| 26-121 | Amended | 382 |
| 26-202.1 | Amended | 48, 103, 448 |
| 26-202.2 | Amended | 125 |
| 26-202.3 | Amended | 39 |
| 26-215 | Amended | 451 |
| 26-301 | Amended | 99 |
| 26-510 | Amended | 452 |
| 26-701 | Amended | 53 |
| 26-702, 703 | Repealed | 53 |
| 26-707 | Repealed | 53 |
| 27-313 | Amended | 446 |
| 27-409 | Amended | 380 |
| 27-417 | Amended | 382 |
| 28-105 | Amended | 175 |
| 28-111 | Amended | 429 |
| 28-123 | Amended | 430 |
| 28-124 | Amended | 431 |
| 28-304 | Amended | 444 |
| 30-601-609 | Repealed | 1078 |
| 31-135 | Amended | 698 |
| 31-201 | Amended | 419 |
| 31-205, 206 | Amended | 421 |
| 31-209, 210 | Amended | 422 |
| 32-711 | Amended | 510 |
| 32-1615 | Amended | 183 |
| 32-1619 | Amended | 427 |
| 32-1626 | Amended | 673 |
| 32-1905(2) | Amended | 1097 |
| 32-2001, 2002 | Amended | 471 |
| 32-2003 | Amended | 472 |
| 32-2006, 2007 | Amended | 474 |
| 32-2008, 2009 | Amended | 475 |
| 32-2009.1, 2010 | Amended | 476 |
| 32-2137 | Amended | 638 |
| 32-2174 | Amended | 190 |
| 32-21-163 | Amended | 562 |
| 32-21-164 | Amended | 563 |
| 38-102 | Amended | 1130 |
| 38-103 | Repealed | 1154 |
| 38-104 | Amended | 1131 |




HeinOnline -- 1963 vol. II 46 1963

# INDEX


| Title-Sec. | | Page |
|---|---|---|
| 38-105, 106 | Repealed | 1154 |
| 38-107 | Amended | 1131 |
| 38-108 | Amended | 644, 1131 |
| 38-109 | Amended | 1131 |
| 38-110 | Amended | 1132 |
| 38-111 | Repealed | 1154 |
| 38-118 | Repealed | 593, 644 |
| 38-119 | Amended | 1132 |
| 38-207 | Amended | 1132 |
| 38-210 | Amended | 442 |
| 38-214 | Repealed | 644 |
| 38-304 | Repealed | 644 |
| 38-409 | Repealed | 644 |
| 38-411, 412 | Repealed | 644 |
| 38-502 | Amended | 1132 |
| 38-504, 505 | Amended | 1133 |
| 38-701 | Repealed | 221 |
| 38-702 | Repealed | 221, 1154 |
| 38-703-706 | Repealed | 221 |
| 38-707, 708 | Repealed | 221, 644 |
| 38-709-711 | Repealed | 221 |
| 38-801 | Repealed | 1154 |
| 38-802 | Amended | 1144 |
| 38-803 | Repealed | 1154 |
| 38-804, 805 | Amended | 1145 |
| 38-808, 809 | Repealed | 644 |
| 38-809.1 | Repealed | 644 |
| 38-812, 815 | Repealed | 644 |
| 38-817, 818 | Repealed | 1154 |
| 38-901, 902 | Repealed | 1154 |
| 38-1002 | Amended | 1133 |
| 38-1101 | Amended | 1146 |
| 38-1108 | Amended | 1146 |
| 40-2717 | Amended | 327 |
| 40-2821 | Amended | 165 |
| 40-2822 | Amended | 155 |
| 41-1201 | Amended | 482 |
| 41-1202 | Amended | 484 |
| 41-1603 | Amended | 688 |
| 43-310 | Amended | 44 |
| 44-213 | Amended | 795 |
| 44-407 | Repealed | 447 |
| 44-410 | Amended | 335 |
| 44-412 | Amended | 336 |
| 44-501-508 | Repealed | 86 |
| 44-509, 510 | Repealed | 86 |
| 44-509, 510 | Amended | 310 |
| 44-511 | Repealed | 86 |
| 44-512, 513 | Repealed | 87 |
| 44-514 | Repealed | 87 |
| 44-514 | Amended | 310 |
| 44-515 | Repealed | 87 |
| 45-106 | Repealed | 1078 |
| 45-109, 112 | Amended | 1098 |
| 45-116 | Amended | 198 |
| 45-301 | Amended | 1098 |
| 45-308 | Amended | 1099 |
| 45-704, 707 | Amended | 1099 |
| 45-809, 911 | Amended | 1100 |
| 45-1003 | Amended | 582 |
| 45-1004-1006 | Repealed | 582 |
| 45-1104 | Repealed | 1078 |
| 45-1106 | Amended | 1100 |
| 45-1107 | Amended | 1101 |
| 45-1301-1305 | Repealed | 1078 |
| 45-1410 | Amended | 1101 |
| 46-105 | Amended | 336 |
| 46-241 | Repealed | 447 |
| 46-609 | Amended | 337 |
| 46-704, 707 | Amended | 337 |
| 46-803 | Amended | 348 |
| 46-804 | Amended | 338 |
| 46-806 | Amended | 339 |
| 46-904 | Amended | 347 |
| 46-911 | Amended | 341 |
| 46-1005 | Amended | 52 |
| 46-1006 | Amended | 348 |
| 46-1901, 1903 | Amended | 342 |
| 46-1904 | Amended | 344 |
| 46-1912 | Amended | 344 |
| 46-1914, 1915 | Amended | 345 |
| 46-1411, 1413 | Amended | 43 |
| 46-2306 | Amended | 379 |
| 46-2330 | Repealed | 447 |
| 46-2331 | Amended | 380 |
| 47-124 | Amended | 1102 |
| 48-102, 113 | Repealed | 712 |
| 48-117, 118 | Repealed | 712 |
| 48-118.1 | Amended | 711 |
| 48-118.2 | Repealed | 712 |
| 48-121 | Repealed | 712 |
| 48-202 | Amended | 503 |
| 48-203 | Amended | 502 |
| 48-204, 205 | Repealed | 504 |
| 52-114, 116 | Amended | 1102 |
| 52-117 | Added | 1103 |
| 52-212 | Amended | 1103 |
| 52-301-311 | Repealed | 1078 |
| 52-312 | Amended | 1103 |
| 52-313, 314 | Amended | 1104 |
| 52-315-317 | Repealed | 1078 |
| 52-319, 320 | Amended | 1105 |
| 52-321 | Amended | 1106 |
| 52-322 | Amended | 341, 1106 |
| 52-323 | Amended | 1106 |
| 53-106.1 | Amended | 178 |
| 53-110 | Amended | 1107 |
| 53-114 | Amended | 771 |
| 53-122 | Amended | 436, 533 |
| 53-129 | Amended | 624 |
| 53-204 | Repealed | 574 |
| 53-615 | Amended | 453 |
| 53-625 | Repealed | 625 |
| 53-642 | Amended | 457 |
| 55-101-1801 | Repealed | 1078 |
| 56-107 | Repealed | 1078 |
| 59-516 | Amended | 183 |
| 59-516.1 | Added | 1109 |
| 59-538 | Amended | 225 |
| 59-801 | Amended | 232 |




HeinOnline -- 1963 vol. II 47 1963

# INDEX


| Title-Sec. | | Page |
|---|---|---|
| 59-802 | Amended | 233 |
| 59-1103.1 | Amended | 416 |
| 59-1104 | Amended | 416 |
| 59-1105 | Amended | 418 |
| 60-139 | Repealed | 447 |
| 60-145 | Amended | 383 |
| 60-147 | Amended | 386 |
| 61-211 | Amended | 3 |
| 62-305 | Amended | 302 |
| 65-104, 107 | Repealed | 1078 |
| 65-115-126 | Repealed | 1078 |
| 65-201-219 | Repealed | 1078 |
| 66-108, 109 | Amended | 367 |
| 66-202 | Amended | 1110 |
| 66-204 | Amended | 511 |
| 66-407 | Amended | 366 |
| 66-408 | Amended | 367 |
| 66-513 | Amended | 368 |
| 66-603, 607 | Amended | 361 |
| 66-608 | Amended | 363 |
| 66-809 | Amended | 364 |
| 66-815 | Amended | 268 |
| 66-904 | Amended | 371 |
| 66-906 | Amended | 372 |
| 66-909 | Amended | 374 |
| 66-919 | Amended | 375 |
| 66-925 | Amended | 376 |
| 66-1008 | Amended | 359 |
| 66-1009 | Amended | 360 |
| 66-1228 | Amended | 587 |
| 66-1234, 1236 | Amended | 588 |
| 66-1237 | Amended | 354 |
| 66-1307, 1311 | Amended | 355 |
| 66-1314 | Amended | 356 |
| 66-1405 | Amended | 370 |
| 66-1410 | Amended | 371 |
| 66-1527 | Amended | 364 |
| 66-1812 | Amended | 444 |
| 66-1901-1923 | Repealed | 814 |
| 66-2104 | Amended | 356 |
| 66-2106 | Amended | 357 |
| 66-2203, 2204 | Amended | 357 |
| 66-2333 | Amended | 356 |
| 66-2403 | Amended | 368 |
| 66-2407 | Amended | 370 |
| 66-2418 | Repealed | 447 |
| 66-2503 | Amended | 363 |
| 66-2602 | Amended | 715 |
| 66-2604 | Amended | 376 |
| 66-2605 | Amended | 377, 716 |
| 66-2606 | Amended | 378, 717 |
| 67-1301 | Amended | 1110 |
| 67-1410 | Added | 1110 |
| 67-1702-1704 | Repealed | 1078 |
| 68-405 | Amended | 415 |
| 68-901 | Amended | 625 |
| 68-1101 | Amended | 630 |
| 69-119 | Amended | 63 |
| 69-1342, 1343 | Amended | 496 |
| 69-1345 | Amended | 497 |
| 69-1516 | Amended | 390 |
| 69-2306, 2309 | Amended | 63 |
| 69-2310 | Amended | 64 |
| 69-3015 | Amended | 324 |
| 69-3404 | Amended | 354 |
| 69-3502 | Amended | 700 |
| 69-3505 | Amended | 701 |
| 71-123 | Amended | 285 |
| 71-217 | Amended | 79 |
| 71-222 | Amended | 746 |
| 71-302 | Amended | 194 |
| 71-307 | Amended | 541 |
| 71-901 | Amended | 426 |
| 72-106 | Repealed | 257, 641 |
| 72-108-110 | Repealed | 257 |
| 72-211, 224 | Amended | 1110 |
| 72-303 | Repealed | 1078 |
| 72-305-307 | Repealed | 1078 |
| 74-201, 202 | Repealed | 1078 |
| 74-204-207 | Repealed | 1078 |
| 74-321 | Repealed | 1078 |
| 74-325 | Added | 1111 |
| 74-401-403 | Repealed | 1078 |
| 74-502 | Repealed | 1078 |
| 74-505 | Added | 1111 |
| 74-608 | Amended | 1111 |
| 75-207-215 | Repealed | 823 |
| 75-301-303 | Amended | 1153 |
| 75-310 | Amended | 1206 |
| 75-312 | Repealed | 1154 |
| 75-706 | Amended | 444 |
| 75-723 | Amended | 445 |
| 75-807, 811 | Amended | 445 |
| 75-1315 | Amended | 436 |
| 75-1620 | Amended | 205 |
| 75-1630 | Amended | 210, 519, 814 |
| 75-1632 | Amended | 160, 514 |
| 75-1706 | Amended | 543 |
| 75-1713.1 | Amended | 1155 |
| 75-1723 | Amended | 544, 1158 |
| 75-1802 | Amended | 607 |
| 75-1804 | Amended | 277 |
| 75-1816 | Amended | 1158 |
| 75-2212 | Amended | 114 |
| 75-2401 | Amended | 282 |
| 75-2521 | Amended | 321 |
| 75-2701 | Amended | 633 |
| 75-2707 | Amended | 655 |
| 75-2708 | Amended | 414 |
| 75-2709 | Amended | 660 |
| 75-3413 | Amended | 320 |
| 75-3414 | Amended | 207 |
| 75-3503 | Amended | 321 |
| 75-3505 | Amended | 322 |
| 75-3611 | Amended | 1160 |
| 75-3612 | Amended | 311, 1162 |
| 75-3613, 3614 | Amended | 314 |
| 75-3615 | Amended | 315 |
| 75-3616 | Amended | 315, 1162 |
| 75-3617 | Amended | 1163 |




HeinOnline -- 1963 vol. II 48 1963

# INDEX


| Title-Sec. | | Page |
|---|---|---|
| 75-3618 | Amended | 316, 1163 |
| 75-3619 | Amended | 318, 1165 |
| 75-3620, 3621 | Amended | 319 |
| 75-3701 | Amended | 434 |
| 75-3706 | Amended | 1166 |
| 75-3722 | Amended | 1167 |
| 75-3801 | Amended | 1168 |
| 75-4120 | Amended | 844 |
| 75-4121-4123 | Amended | 845 |
| 75-4124 | Amended | 846 |
| 75-4125, 4126 | Amended | 847 |
| 75-4127 | Amended | 848 |
| 75-4128 | Amended | 849 |
| 75-4130 | Amended | 850 |
| 75-4133, 4134 | Amended | 850 |
| 75-4138 | Amended | 460, 851 |
| 75-4139 | Amended | 460 |
| 75-4146 | Amended | 28 |
| 75-4230 | Amended | 28, 492, 1170 |
| 75-4303, 4304 | Amended | 164 |
| 75-4507-4510 | Repealed | 1176 |
| 75-4516.1 | Amended | 1172 |
| 75-4518.1 | Amended | 1174 |
| 75-4601 | Amended | 678 |
| 75-4802 | Amended | 323 |
| 75-5001 | Amended | 755 |
| 75-5003 | Amended | 756 |
| 75-5101 | Amended | 324 |
| 75-5102 | Repealed | 447 |
| 77-117 | Amended | 157 |
| 77-417 | Amended | 1207 |
| 77-419 | Amended | 1208 |
| 78-101 | Amended | 688 |
| 78-101-109 | Repealed | 1210 |
| 78-201 | Repealed | 1210 |
| 78-202 | Amended | 1208 |
| 78-203-208 | Repealed | 447, 1210 |
| 78-210, 211 | Repealed | 1210 |
| 78-301 | Repealed | 1210 |
| 78-302 | Amended | 388, 1208 |
| 78-303, 304 | Repealed | 1210 |
| 78-305-308 | Repealed | 447, 1210 |
| 78-401-416 | Repealed | 447, 1210 |
| 78-501 | Amended | 310 |
| 78-502 | Repealed | 447 |
| 78-503 | Amended | 310 |
| 78-601-620 | Repealed | 447, 1210 |
| 78-701-736 | Repealed | 447, 1210 |
| 78-801-818 | Repealed | 447, 1210 |
| 78-901-907 | Repealed | 1210 |
| 78-908 | Repealed | 447, 1210 |
| 78-909 | Repealed | 1210 |
| 79-103 | Repealed | 447 |
| 79-201 | Amended | 290 |
| 79-207 | Repealed | 447 |
| 79-301 | Amended | 46 |
| 79-304 | Amended | 292 |
| 79-306 | Amended | 291 |
| 79-401-408 | Repealed | 447 |
| 79-501-505 | Repealed | 447 |
| 79-601 | Amended | 292 |
| 79-603 | Amended | 293 |
| 79-813 | Amended | 293 |
| 79-1008 | Repealed | 447 |
| 79-1011, 1015 | Amended | 294 |
| 79-1202 | Amended | 130, 296, 830 |
| 79-1203 | Amended | 298 |
| 79-1204, 1205 | Repealed | 447 |
| 79-1206, 1208 | Amended | 299 |
| 79-1210 | Repealed | 447 |
| 79-1211 | Amended | 299 |
| 79-1212, 1213 | Amended | 300 |
| 79-1214 | Amended | 301 |
| 79-1401, 1403 | Amended | 301 |
| 79-1905 | Amended | 1112 |
| 80-115 | Repealed | 447 |
| 80-202-205 | Repealed | 1154 |
| 80-206, 207 | Amended | 1141 |
| 80-208 | Repealed | 1154 |
| 80-209, 210.1 | Amended | 1142 |
| 80-211 | Amended | 1143 |
| 80-211 | Repealed | 644 |
| 80-212, 213 | Amended | 1144 |
| 80-212, 213 | Repealed | 644 |
| 80-214 | Repealed | 1154 |
| 80-216, 217 | Repealed | 1154 |
| 80-301 | Repealed | 1154 |
| 80-302 | Amended | 1128 |
| 80-304-307 | Repealed | 1154 |
| 80-308 | Amended | 1129 |
| 80-309 | Repealed | 1154 |
| 80-310 | Amended | 1129 |
| 80-311 | Amended | 1130 |
| 80-312 | Repealed | 1154 |
| 80-313 | Amended | 1130 |
| 80-314, 315 | Repealed | 1154 |
| 80-316 | Amended | 1130 |
| 80-317-319 | Repealed | 1154 |
| 80-321, 322 | Repealed | 1154 |
| 80-322 | Amended | 443 |
| 80-702-705 | Amended | 1134 |
| 80-706 | Repealed | 1154 |
| 80-707, 707.1 | Amended | 1135 |
| 80-707.5 | Amended | 1135 |
| 80-711 | Amended | 1137 |
| 80-716-718 | Repealed | 1154 |
| 80-719 | Amended | 1137 |
| 80-720 | Amended | 441, 1138 |
| 80-731 | Amended | 1138 |
| 80-732 | Amended | 1139 |
| 80-735-737 | Repealed | 1154 |
| 80-738, 740 | Amended | 1139 |
| 80-743 | Amended | 1140 |
| 80-744 | Repealed | 1154 |
| 80-745 | Amended | 1140 |
| 80-747 | Repealed | 447, 1154 |
| 80-749 | Repealed | 1154 |
| 80-801-805.1 | Repealed | 1154 |
| 80-806 | Amended | 1147 |
| 80-808 | Repealed | 1154 |




HeinOnline -- 1963 vol. II 49 1963

# INDEX


| Title-Sec. | | Page |
|---|---|---|
| 80-809 | Amended | 1147 |
| 80-810 | Repealed | 1154 |
| 80-812-814 | Repealed | 1154 |
| 80-816 | Amended | 827 |
| 80-818, 819 | Amended | 1147 |
| 80-820 | Amended | 1148 |
| 80-825-827 | Repealed | 1154 |
| 80-901 | Repealed | 1154 |
| 80-902 | Amended | 1148 |
| 80-904 | Repealed | 1154 |
| 80-906-910 | Repealed | 1154 |
| 80-911 | Amended | 1148 |
| 80-912-914 | Repealed | 1154 |
| 80-916, 917 | Repealed | 1154 |
| 80-920 | Amended | 828 |
| 80-922-924 | Amended | 1149 |
| 80-930 | Repealed | 1154 |
| 80-1101 | Amended | 1154 |
| 81-209 | Amended | 688 |
| 81-401, 402 | Amended | 840 |
| 81-405 | Amended | 841 |
| 81-406, 407 | Amended | 842 |
| 81-414 | Amended | 228 |
| 81-417 (?) | Repealed | 839 |
| 81-433 | Amended | 843 |
| 81-433.1 (?) | Repealed | 840 |
| 81-1001 | Amended | 435 |
| 81-1005 | Amended | 435 |
| 81-1403 | Amended | 688 |
| 81-1408 | Amended | 284 |
| 81-1410 | Amended | 430 |
| 81-1601 | Amended | 431 |
| 81-1705 | Amended | 509 |
| 81-2011 | Amended | 689 |
| 81-2011 | Repealed | 257, 447 |
| 81-2014 | Repealed | 257 |
| 81-2016 | Repealed | 447 |
| 81-2122, 2124 | Repealed | 447 |
| 82-109.2 | Amended | 1209 |
| 82-308 | Amended | 387, 1209 |
| 82-405, 407, 408 | Repealed | 257 |
| 82-503 | Amended | 336 |
| 82-701 | Repealed | 65 |
| 82-702 | Repealed | 65 |
| 82-702 | Amended | 364 |
| 82-703-708 | Repealed | 65 |
| 82-709 | Amended | 366 |
| 82-709 | Repealed | 65 |
| 82-710, 711 | Repealed | 65 |
| 82-1008 | Amended | 235, 278 |
| 82-1011 | Amended | 689 |
| 82-1012 | Repealed | 257 |
| 82-1125 | Repealed | 1210 |
| 82-1132, 1134 | Repealed | 1210 |
| 82-1137 | Amended | 754 |
| 82-1138 | Amended | 755 |
| 82-1205, 1206 | Repealed | 257 |
| 82-1505 | Amended | 329 |
| 82-1507 | Amended | 328 |
| 82-1511 | Amended | 329 |
| 82-1516 | Amended | 138, 330 |
| 82-1517 | Amended | 331 |
| 82-1601-1606 | Repealed | 1210 |
| 82-1803 | Repealed | 257 |
| 82-3104 | Amended | 323 |
| 82-3201-3204 | Repealed | 1210 |
| 82-3205 | Amended | 1210 |
| 84-406 | Amended | 773 |
| 84-702 | Amended | 690 |
| 84-708 | Amended | 693 |
| 84-1504 | Amended | 557 |
| 84-1505 | Amended | 559 |
| 84-1508 | Amended | 560 |
| 84-1511 | Amended | 113 |
| 84-1801 | Amended | 141 |
| 84-1802 | Amended | 117, 142, 427 |
| 84-1807 | Amended | 144 |
| 84-1809 | Amended | 145 |
| 84-1812 | Amended | 238, 681 |
| 84-1813 | Amended | 157 |
| 84-1818 | Amended | 19, 120, 239, 683 |
| 84-1819 | Amended | 124, 433 |
| 84-1831 | Amended | 127, 145 |
| 84-1832 | Amended | 129 |
| 84-1833 | Amended | 147 |
| 84-1835 | Amended | 150 |
| 84-1840 | Amended | 427 |
| 84-1901 | Amended | 311 |
| 84-2708 | Amended | 347 |
| 84-3807 | Amended | 500 |
| 84-4198 | Amended | 159 |
| 84-4202 | Amended | 498 |
| 84-4501 | Amended | 237 |
| 84-4825 | Amended | 238 |
| 84-4903 | Amended | 593 |
| 84-4905 | Amended | 112 |
| 84-4907 | Amended | 738 |
| 84-4910 | Amended | 593 |
| 84-4914 | Amended | 600 |
| 84-4922 | Amended | 602 |
| 84-4924 | Amended | 603 |
| 84-4953 | Repealed | 244 |
| 84-4956 | Amended | 597 |
| 84-4957 | Repealed | 244 |
| 84-5211 | Amended | 349 |
| 84-5212 | Amended | 336 |
| 84-5214 | Amended | 346 |
| 84-5606 | Amended | 191, 1195 |
| 84-5621 | Amended | 425, 1197 |
| 84-6208 | Amended | 170 |
| 86-705, 706 | Repealed | 1078 |
| 87-103 | Amended | 1178 |
| 87-106 | Amended | 1181 |
| 87-109 | Amended | 1185 |
| 87-111 | Amended | 422 |
| 87-112 | Amended | 423 |
| 87-133 | Amended | 423 |
| 87-149 | Amended | 1189 |
| 88-101-149 | Repealed | 1078 |
| 88-152 | Amended | 1113 |




HeinOnline -- 1963 vol. II 50 1963

# INDEX


| Title-Sec. | | Page |
|---|---|---|
| 88-154 | Amended | 1114 |
| 88-156-160 | Repealed | 1078 |
| 89-109(2) | Amended | 1114 |
| 89-116.1 | Amended | 333 |
| 89-116.2 | Repealed | 447 |
| 89-120 | Amended | 333 |
| 89-121 | Amended | 645 |
| 89-401 | Amended | 446 |
| 89-402 | Amended | 334 |
| 89-403 | Repealed | 447 |
| 89-1001 | Amended | 703 |
| 89-3201 | Amended | 589 |
| 91-502 | Amended | 350 |
| 91-504, 505 | Amended | 351 |
| 91-506 | Amended | 352 |
| 91-507 | Amended | 353 |
| 91-510, 511 | Repealed | 447 |
| 91-512 | Amended | 353 |
| 91-513 | Repealed | 447 |
| 91-523 | Amended | 353 |
| 91-526 | Amended | 354 |
| 91-901 | Amended | 7 |
| 91-1101, 1107 | Amended | 24 |
| 91-1702 | Amended | 227 |
| 91-2202 | Amended | 188 |
| 91-4414 | Amended | 670 |
| 91-4418 | Amended | 243 |
| 92-104 | Amended | 690 |
| 92-116 | Amended | 388 |
| 92-119 | Amended | 389 |
| 92-120 | Amended | 405 |
| 92-208, 209 | Amended | 189 |
| 92-411 | Amended | 462 |
| 92-709A | Amended | 413 |
| 92-820 | Amended | 390 |
| 92-837 | Repealed | 447 |
| 92-840 | Amended | 391 |
| 92-902 | Amended | 391 |
| 92-1005 | Amended | 392 |
| 92-1101 | Amended | 405 |
| 92-1102, 1103 | Amended | 407 |
| 92-1105 | Amended | 406 |
| 92-1106 | Amended | 407 |
| 92-1110 | Amended | 408 |
| 92-1112 | Amended | 410 |
| 92-1113 | Amended | 411 |
| 92-1114 | Amended | 408 |
| 92-1115, 1116 | Amended | 409 |
| 92-1119 | Amended | 392 |
| 92-1122, 1123 | Amended | 410 |
| 92-1302 | Amended | 411 |
| 92-1334 | Amended | 392 |
| 92-1343 | Amended | 411 |
| 92-1357 | Amended | 412 |
| 92-1358 | Amended | 405 |
| 92-1401 | Amended | 676 |
| 92-1405 | Repealed | 676 |
| 92-1406 | Amended | 676 |
| 93-302 | Amended | 699 |
| 93-303 | Amended | 641 |
| 93-901 | Amended | 172 |
| 93-902 | Amended | 32 |
| 93-1904 | Amended | 495 |
| 93-2011 | Amended | 334 |
| 93-2014, 2015 | Amended | 335 |
| 93-2020 | Amended | 335 |
| 93-2021, 2022 | Repealed | 447 |
| 93-2025 | Repealed | 447 |
| 93-2719 | Repealed | 7 |
| 93-2802 | Amended | 1114 |
| 93-2824 | Re-enacted | 15 |
| 93-3001 | Repealed | 6 |
| 93-3004 | Repealed | 6, 574 |
| 93-3009, 3010 | Repealed | 574 |
| 93-3019 | Repealed | 574 |
| 93-3403 | Amended | 1115 |
| 93-3702 | Amended | 16 |
| 93-4301 | Amended | 1115 |
| 93-4302 | Amended | 1116 |
| 93-4307(4) | Amended | 1116 |
| 93-4338 | Amended | 1117 |
| 93-4339 | Repealed | 1078 |
| 93-4344 | Amended | 1118 |
| 93-4346 | Amended | 1119 |
| 93-5811 | Amended | 1119 |
| 93-6001 | Amended | 1119 |
| 93-6004 | Amended | 1120 |
| 93-6005 | Amended | 531 |
| 93-6006, 6007 | Amended | 532 |
| 93-6010 | Added | 1120 |
| 93-6206-6208 | Repealed | 574 |
| 93-8505 | Amended | 6 |
| 93-8613 | Amended | 1120 |
| 93-401-22 | Amended | 1120 |
| 93-1401-7 | Amended | 1121 |
| 93-2703-6 | Amended | 180 |
| 93-2706-4 | Amended | 217 |
| 93-2707-2 | Amended | 563 |
| 93-2711-6 | Amended | 5 |
| 93-2711-7 | Amended | 574 |
| 94-301 | Amended | 539 |
| 94-304 | Amended | 540 |
| 94-3203 | Amended | 513 |
| 94-3209 | Repealed | 514 |
| 94-3211 | Added | 512 |
| 94-3579 | Amended | 277 |
| 94-35-152.13 | Amended | 441 |
| 94-35-204 | Amended | 269 |
| 94-9825 | Amended | 691 |




HeinOnline -- 1963 vol. II 51 1963

# INITIATIVE MEASURE


| | | | |
|---|---|---|---|
| No. 54 | Sec. 1 | Added | 1191 |
| No. 54 | Sec. 2 | Added | 1192 |
| No. 54 | Sec. 3 | Amended | 1193 |
| No. 54 | Sec. 12 | Added | 1194 |
| No. 54 | Sec. 14-B | Added | 1195 |
| No. 54 | Sec. 17-A | Amended | 1198 |
| No. 54 | Sec. 1, 2, 12 | Repealed | 1198 |


# Laws of 1949

## THIRTY-FIRST SESSION


| Chap. | Sec. | | Page |
|---|---|---|---|
| 16 | | Amended | 201 |


# Laws of 1951

## THIRTY-SECOND SESSION


| Chap. | Sec. | | Page |
|---|---|---|---|
| 148 | 1 | Amended | 333 |


# Laws of 1953

## THIRTY-THIRD SESSION


| Chap. | Sec. | | Page |
|---|---|---|---|
| 105 | | Amended | 670 |


# Laws of 1955

## THIRTY-FOURTH SESSION


| Chap. | Sec. | | Page | Chap. | Sec. | | Page |
|---|---|---|---|---|---|---|---|
| 267 | 1 | Amended | 102 | 267 | 2 | Amended | 125 |


# Laws of 1957

## THIRTY-FIFTH SESSION


| Chap. | Sec. | | Page | Chap. | Sec. | | Page |
|---|---|---|---|---|---|---|---|
| 16 | 1 | Amended | 102 | 131 | | Repealed | 814 |
| 44 | 10 | Amended | 581 | 132 | | Repealed | 814 |
| 129 | | Repealed | 814 | 248 | 1-9 | Repealed | 447 |
| 130 | | Repealed | 814 | | | | |




HeinOnline -- 1963 vol. II 52 1963

# Laws of 1959

## THIRTY-SIXTH SESSION


| Chap. | Sec. | | Page |
|---|---|---|---|
| 36 | 2 | Amended | 102 |
| 158 | 4 | Amended | 294 |
| 173 | | Amended | 130 |
| 174 | 3 | Amended | 354 |
| 195 | | Amended | 1087 |
| 242 | 1 | Amended | 1135 |
| 242 | 5 | Amended | 1135 |
| 282 | | Amended | 1111 |
| 284(?) | 2 | Repealed | 840 |


# Laws of 1961

## THIRTY-SEVENTH SESSION


| Chap. | Sec. | | Page |
|---|---|---|---|
| 13 | | Amended | 4 |
| 13 | 12 | Amended | 180 |
| 13 | 41 | Amended | 217 |
| 13 | 81 | Amended | 574 |
| 13 | 82 | Amended | 16, 575 |
| 13 | 83 | Amended | 16, 575 |
| 21 | 1 | Amended | 676 |
| 21 | 6 | Repealed | 676 |
| 21 | 7 | Amended | 676 |
| 39 | 3 | Amended | 363 |
| 166 | | Amended | 223 |
| 251 | 24 | Amended | 325 |




HeinOnline -- 1963 vol. II 53 1963